

FEUDAL FORCES: DEMOCRATIC NATIONS

Police accountability in Commonwealth South Asia



2007
Commonwealth Human Rights Initiative

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The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

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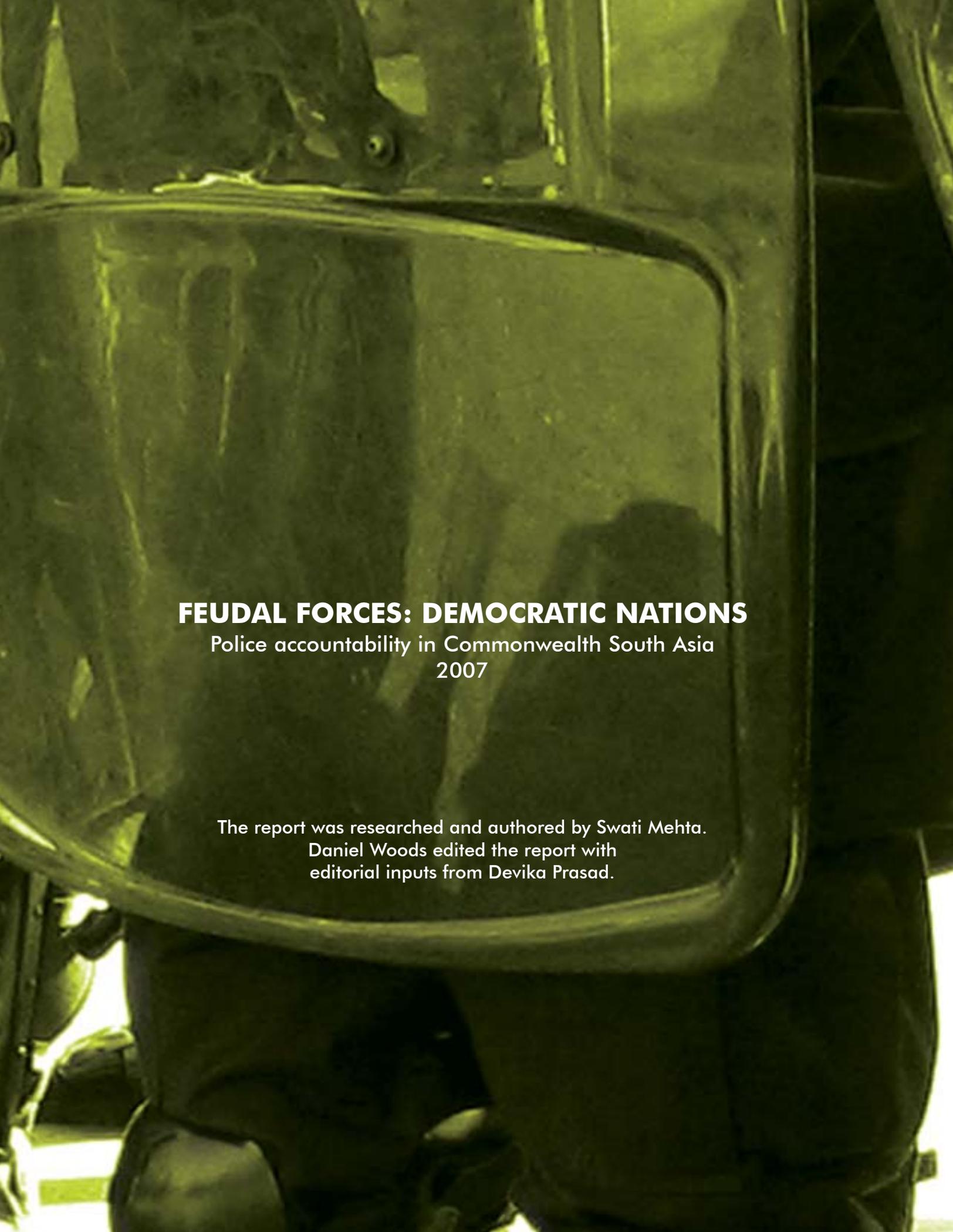
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The report was researched and authored by Swati Mehta.
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editorial inputs from Devika Prasad.

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CHRI police programme

CHRI has worked across the Commonwealth on issues of police reform for around ten years. This report is produced as part of a number of activities focused on building knowledge and catalysing accountability-focused reform in South Asia, funded by Friedrich Naumann - Stiftung für die Freiheit during 2007. CHRI's programme in India and South Asia aims to develop and catalyse a reform movement in the region by creating and strengthening regional and local networks working on police reform and policing issues, as well as by increasing documentation and media attention around human rights violations by the police, policing practices, accountability and police reform processes in South Asia. The programme's activities in India have included facilitating a series of regional civil society consultation workshops to help build capacity and inform the grassroots movement for police reform, advocating for police accountability and reform to governments and in the community, assisting with the drafting of a Model Police Act for India and intervening in public interest litigation concerned with issues of policing. The programme began expanding its work into South Asia in 2007, with a regional roundtable that brought together 50 representatives from India, Bangladesh, Sri Lanka, Maldives, Pakistan, the United Kingdom and Northern Ireland. Delegates hailed from across government, civil society, media, human rights institutions and police organisations and met to discuss and debate the trends, commonalities and challenges of policing in South Asia. This report is the next step in CHRI's engagement with police reform and accountability in South Asia.

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Introduction

Bangladesh, India, Maldives, Pakistan and Sri Lanka make up Commonwealth South Asia. Across the region, issues around police, police reform and police accountability are key human rights concerns and governance priorities. Policing in the region contends with heterogeneous societies, violent crime, protracted conflict, poverty and political unrest. The police must be equipped to meet all these challenges, in support of democratic standards and human rights.

Unfortunately, the post-independence histories of the countries of South Asia paint a grim picture of the state of policing. The British colonial government, with the sole intention to keep its subjects under control, introduced a formal, state-administered system of policing to the region. The foundation of policing in the region was imperialism. Alarming, neither the advent of independence nor democracy has changed policing models. Post independence governments have retained archaic policing laws that perpetuate the ills of colonial policing towards their own ends and to maintain their own power. Illegitimate political interference in policing is endemic across the region and has shaped the subservient, partisan, and unaccountable nature of policing. By controlling powers to transfer, promote or punish police officers, ruling regimes ensure that officers toe their line. Undeniably, police in the region are entirely dwarfed and most often controlled by executives that make little effort to check the huge constraints that the police work within, including lack of financial and human resources, immense working hours and extremely hostile conditions in conflict areas.

This legacy of unlawful political meddling has had serious consequences for policing. Policing has not developed into a trusted public service that abides by constitutional values. Policing is often incapable or is blatantly defiant of established rules, standards, and procedures. Police agencies in these countries have played a central role in state led violence, protracted internal conflicts, and suppression of democracy. All of these trends persist due to the dearth of police accountability in the region. The lack of accountability is in turn a direct result of political interference with police functioning. Where decisions on basic police functioning are taken outside the police organisation, it is impossible to hold the police accountable when things go wrong.

A fundamental part of a modern, democratic and transparent police service is accountability – accountability to the state, accountability to the community and accountability to the law. Accountability guards against illegitimate political interference, and ensures that police officers are community-focused and held to legal norms and procedures. All the countries in the region – except Maldives, where there is no police law – have strong accountability foundations. Resistance by governments to implement and strengthen existing accountability mechanisms, or put in place badly needed new mechanisms, remains the biggest obstacle to police reform in the region.

All of the countries of Commonwealth South Asia have initiated efforts toward police reform, some led by international donor agencies and others by national governments. Characteristically, all the reform processes are state centric with no public participation or input in the process. The reform efforts in the region offer varied examples of policing

problems as well as insights into police reform. But it is very much a case of two steps forward, and one step back, as good laws are repealed, or important accountability mechanisms are diluted or rendered ineffective in implementation. Political resistance continues to strangle policing.

This report looks at policing in the Commonwealth South Asia and seeks way to strengthen democratic policing in the region. It outlines legal frameworks, institutions and processes already in place to hold the police accountable – a key element of democratic policing. Through analysis of the existing accountability systems, this report examines how entrenched democratic policing is in the region and highlights strategies to strengthen it by exploring some of the best practices in other Commonwealth jurisdictions.

It is time that the decades of discussion and debate around police reform translates to tangible change with the final shaking off of a colonial legacy that has persisted for too long.



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PART 1: CONTEXT

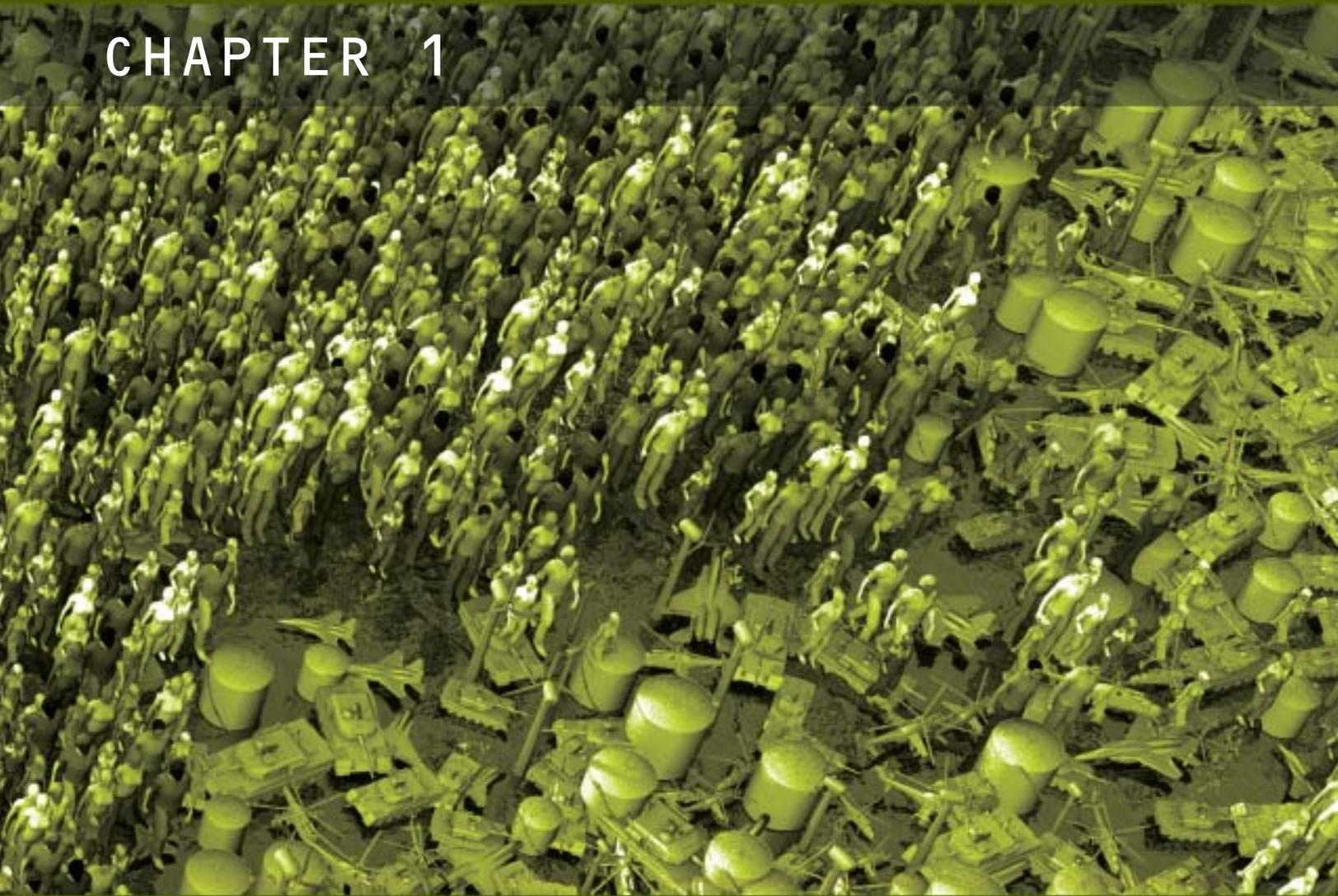


Mapping the policing terrain

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CHAPTER 1



The people, the police, the politics: Social and political context

The story of the development of policing in Commonwealth South Asia - Bangladesh, India, Maldives, Pakistan and Sri Lanka – is a story of colonial rule and regime-style policing giving way to self-determination and independence, but at the same time, the retention of outdated and ineffective models of policing. Repressive political regimes, historical and cultural community emphasis on status and hierarchy and a lack of systemically transparent and democratic governance all transpire to make effective, democratic policing more difficult to achieve.

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As a region, the countries of South Asia have experienced a rocky journey towards democracy marked by constitutional change, military coups and democratic governance giving way to dictatorship. All continue to wrestle with a past and present defined by military coups, dictatorial governance, terrorism and high rates of corruption. Allegiance to the ruler and not the rule of law is a lesson that the police in South Asia – the main tool of regime oppression - have learnt right from the British days of colonial rule.

As South Asia moves towards the realisation of democracy across the region, the police of South Asia must be radically overhauled to bring them into line with the modern practices of democratic policing and accountability.

Colonial past

Traditional systems of law enforcement in the region were replaced by British colonial models of policing in the early 1860s (except in Maldives, where colonial policing arrived in the 1930s). These British policing models were introduced following the first war of independence in British India in 1857. The 1860 Police Commission, constituted immediately prior to the enactment of the 1861 Police Act in what is now Bangladesh, India and Pakistan, records that the objective of the law was a politically useful force. Significantly, the British had a choice to introduce the democratic policing model upon which the London Metropolitan policing system was based, but instead they chose the Irish constabulary model, which was militaristic in its approach. Clearly, it suited the colonial rulers to create a repressive, government-focused force that was alienated from the community and could be used a tool to suppress any dissent against the regime.

Colonial imprints in independent societies

Except for Maldives, the rest of the countries in the region achieved independence from the British around the same time. British India was divided into India and Pakistan in the mid-forties and both achieved independence in 1947. Sri Lanka became independent in 1948. Later, Bangladesh asserted its right of self-determination and became independent from Pakistan in 1971. Maldives gained independence in 1965.

All the countries in the region have experimented with democracy. India is the only country that has remained an unbroken democracy and retained the original constitution it adopted at independence. Sri Lanka has also remained a democracy since its independence, but has seen three constitutions since then, and has changed its governance model from that of Westminster style parliamentary system to a strong Presidential model based on French system. Both Pakistan and Bangladesh have witnessed multiple military coups that have overthrown democratically elected governments. Pakistan has experienced four military coups since independence in 1947 and is headed today by a military General who came to power after the last coup in 1999. Although parliamentary elections were held in October 2002, the national parliamentary government is largely considered to be a puppet of the General, who has proclaimed himself to be the President of the country. Similarly, Bangladesh became an authoritarian one-party state within three years of independence, witnessing five successful coups, many counter-coups and two military dictators between the early 1970s and 1990, when parliamentary democracy was restored. The interim non-party caretaker government that took control in 2006 during the period leading up to a general election in Bangladesh has failed to hold elections since coming to power. It is now claiming that fair elections cannot take place before end of 2008. Amidst allegations that the head of the caretaker government is backed by the military, doubts are cast on the democratic status of Bangladesh once again.



Constitutions: fair game in the political history of the region

India is the only Commonwealth South Asian country that has escaped suspensions and radical amendments to independence constitutions. Bangladesh's 1972 Constitution was suspended following a military coup in March 1982 and the country was placed under martial law until 1986, when the Constitution was reinstated. After independence in 1965, Maldives continued to be governed under its 1954 Constitution, which was replaced in 1968 by a republican constitution. In 1997, the Constitution was amended in light of a 17 year parliamentary review, and changes were adopted that vested huge discretionary powers in the President, including the power to appoint the Cabinet, members of the judiciary, and one-sixth of the Parliament. The President derives additional influence from his constitutional role as the supreme authority to propagate the tenets of Islam¹. After riots in the capital city of Male in September 2003 and much domestic and international pressure, President Gayoom agreed to amend the Constitution and reduce the presidential powers in the Constitution that keep him in power. The Government released a *Road Map for the Democratic Reform Agenda* policy document in 2006, promising reforms ahead of democratic elections. Unfortunately, paper promises have not translated into a reform reality.

Pakistan has also seen its share of suspensions of the Constitution. The 1973 Constitution of Pakistan was suspended following an imposition of martial law in 1977 and was restored with amendments in 1985. Once again, the Constitution was placed in abeyance in October 1999 after a military coup and was reinstated in November 2002 with the amendments. The amendments were later approved by the parliament under the 17th constitutional amendment. Hence, the constitution amended under President Musharraf's regime gives wide discretionary powers to the President in relation to dissolving assemblies, appointing services chiefs and appointing interim government for the conduct of elections after an elected government has completed its tenure.

Sri Lanka has witnessed the promulgation of three constitutions since its independence. The 1972 Constitution of Sri Lanka replaced the 1948 Constitution adopted at independence, and vested the legislative, executive, and judicial branches of government in the National State Assembly. There was significant opposition to this, as it centralised powers and alienated Tamil² minorities in the country by replacing provisions protecting minorities of the 1948 Constitution and conferring a new status for Buddhism. It also sanctioned certain discriminatory measures against the Tamil youth in university admissions. This Constitution was replaced by the 1978 Constitution that radically altered the system of governance in the country by replacing the Westminster model of parliamentary government with a new presidential system based on the French model, with a powerful president. The new Constitution did make several concessions to Tamil sensitivities and gave a new national language status to Tamil, but the harm inflicted by the 1972 Constitution in alienating the Tamil minorities continues to haunt the country.

Irrespective of the date of their independence and their style of governance, each of the South Asian governments chose to retain the colonial model of policing. In fact, police have come to be regarded as an important and indispensable tool of governments to retain power. They can be used to gather intelligence against leaders and members of opposition parties, register false cases against political opponents, crush dissent against the government,

and to ensure regime-favoured voting during elections. This has had huge impact on both the retention of colonial policing model and the public experience of policing in the region. Alienated and suspicious of a community that does not trust them, police forces continue to police with brutality, bias, abuse of power and corruption. It does not suit political masters to have a police organisation that serves the community, protects individual rights, and enforces the law impartially. The relationship between the police and the political executive is one of illegitimate political interference, where the police serve the regime in power. Any attempt to change the relationship is strongly resisted by the political class.

Social context

South Asian communities are deeply divided along lines of religion, caste, ethnicity, region and even language. These fissures often erupt into violence. India faces extremely violent separatist movements based on religion, ethnicity and geography in Kashmir and its North-Eastern states, while Sri Lanka struggles to retain territorial integrity in face of violent armed opposition on grounds of ethnicity in its North and East. Partition of the Indian subcontinent in 1947 left wounds that have not healed; this manifests as violent unrest between Hindus and Muslims, the most recent being majority Hindu violence against minority Muslims in 2002 Gujarat riots. Minority religions in Pakistan and Bangladesh suffer violent crimes at the hands of majority Muslims.

Religion is not the sole cause of violence – minorities within religions are often targets of violent crime perpetrated by fellow believers. In Pakistan, there have been significant incidents of sectarian violence, particularly targeting people from the minority Shi'a Muslim sect.³ While the Dalit people (historically a marginalised caste within the Hindu religion) face immense discrimination and abuse in India from other Hindus, Ahmadiyas (who regard themselves as Muslims but do not believe that Muhhamed was the last Prophet) are targets for abuse in the Muslim communities in Pakistan and Bangladesh.

Discriminatory and abusive practices on the basis of gender are also very common across South Asia. Crimes against women are common and widespread. Apart from often finding themselves victims of sexual assault and trafficking, many women are at risk in their own homes, and lose lives or limbs in family violence as a result acid attacks, domestic violence and murders euphemistically referred to as dowry deaths or honour killings.

Given the social and political contexts within which the police work, it is difficult to blame officers or police organisations alone for non-performance and abusive practices. Policing reflects its context, and so the caste, gender, religious and geographic violence that are all undercurrents in South Asian communities are reflected in policing approaches and practice. Repressive political regimes, historical and cultural community emphasis on status and hierarchy and a lack of systemically transparent and democratic governance all combine to make effective, democratic policing more difficult to achieve. Experts agree that it is difficult to have democratic policing systems in essentially non-democratic societies.

What do the police look like?

All the countries have a police organisation as the main law enforcement agency of the state, distinct from the military. Maldives is the only country in the region that does not have a long history of a separate police organisation – until late 2004, the police organisation operated as a department within the National Security Service (NSS) and was mandated to investigate crimes, collect intelligence, make arrests, and enforce house arrest".⁴ However, in September 2004, the Maldives Police Service ceased to be a paramilitary unit administered by the Ministry of Defence and National Security and became a civil authority administered by the Ministry of Home Affairs.

Policing in the region takes place within either centralised or federal structures. Centralised police organisations have one national police force for the entire country, controlled through



a direct chain of command. Bangladesh, Maldives and Sri Lanka have adopted a centralised system. India and Pakistan have decentralised systems set within federal systems of governance, where the responsibility of maintaining law and order – and consequently of exercising supervisory and policy control – is vested in state or provincial governments. The Indian Constitution, for example, designates law and order as a state subject and all twenty-eight states have their own police organisations. However, the administration of police organisations in India’s seven union territories in the country lies with the federal government. The Constitution also allows the central government to create and control central police organisations, which can be deployed to assist state governments during an emergency.

Police organisations in South Asia

Police organisations in the region vary greatly in their size and organisation. The strength of the police depends on the territory of the country and the law and order issues that it faces. Maldives has a mere 287 officers⁵ in its police organisation, as compared to Sri Lanka, with a total strength of 63,797⁶ personnel. While 123,197⁷ officers serve under police divisions across Bangladesh, Pakistan has a strength of about 350,000 police personnel and India has a whopping 1,530,389⁸ officers in the state police forces (excluding the central police organisations). Again there is much variety in the police population ratio that ranges from 1:1138 in Bangladesh⁹, to 1:694 in India¹⁰ and 1:500¹¹ in Pakistan.

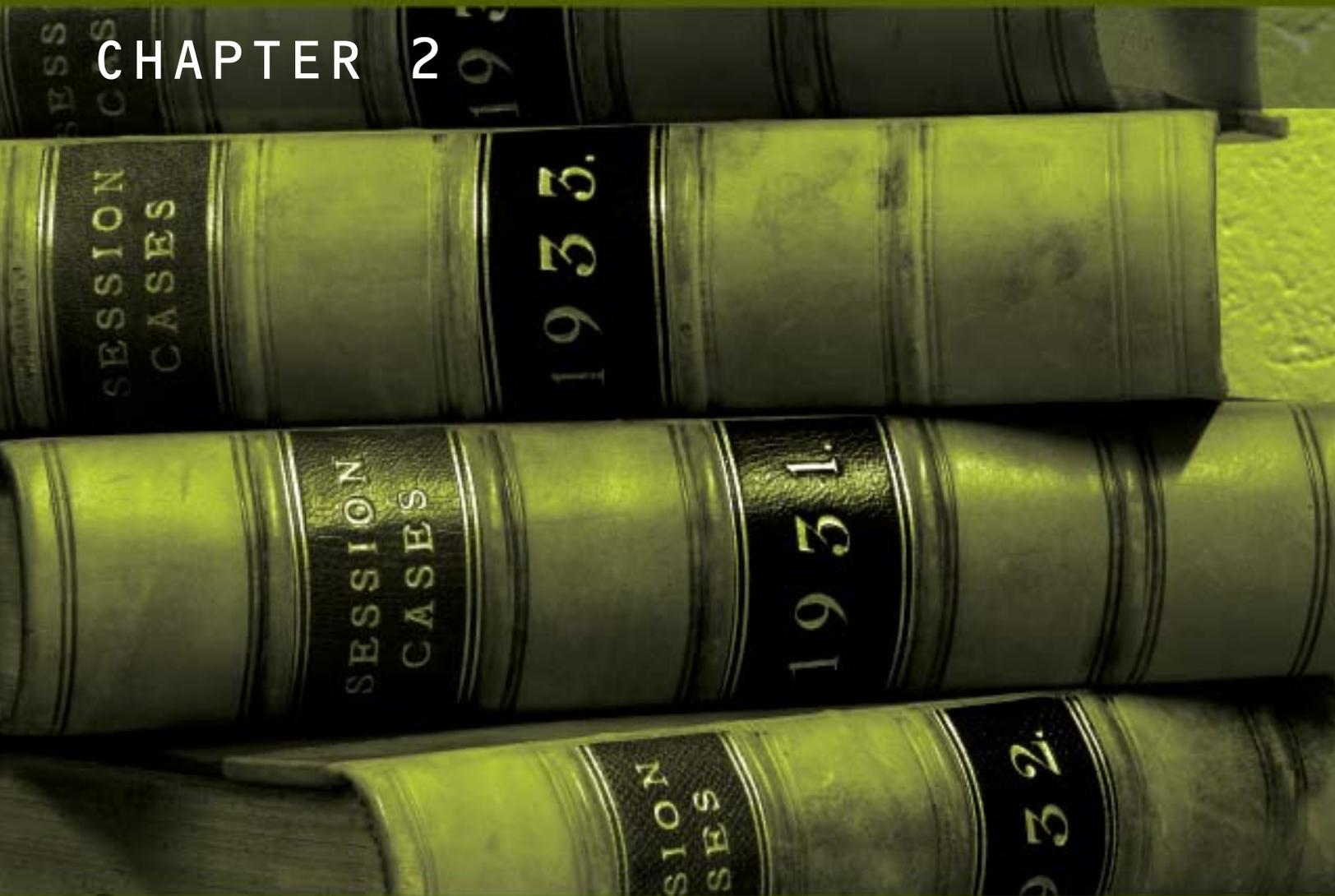
The majority of the police organisations in the region retain colonial structures that reflect sharp divides between senior and junior officers. India’s 1861 Police Act continues to use the phrase inferior officer to denote junior ranks,¹² a term carried over from the colonial era that referred to indigenous junior officers. Across Bangladesh, Pakistan and India, wage structures, working conditions, and even promotion opportunities are limited for junior officers. Many beat officers are often abused, ill-treated and used for running personal errands for senior police officers and their families. This trend mirrors the larger sharp divide between the powerful and the powerless in South Asian communities, with oppression of marginalised groups a living reality for many South Asians.

Debates around police reform and change have been taking place across South Asia for decades – in communities, within police organisations and across governments. For many years, the disappointment was that these debates were not translating into actual reform or change, but over the last few years, a wave of active reform has swept the region, from new laws in Pakistan and Sri Lanka, to Court-centred directions in India and police reform in the context of governance transformation in Maldives. This process of reform has not been truly effective however, as governments have watered down or backed away from worthy change. This has meant that often the rhetoric of reform has not translated to a reform reality. None of the reform processes that have been embarked on have taken place with the participation of the communities that are so fundamentally important to the development of effective, democratic and accountable policing in South Asia.

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Setting up oversight bodies such as the offices of the Ombudsman, National Human Rights Commissions and Police or Public Service Commissions through constitutions (or statutes) provides stable guarantees for a more accountable police organisation.”

CHAPTER 2



Rule of law: Legal frameworks for policing

Besides establishing the structure of police organisations, police acts – and some constitutions – also define specific arrangements for their accountability; and these can further facilitate democratic policing. The Indian and the Bangladesh Police Acts have the dubious distinction of being the oldest police laws (1861) in the Commonwealth, with the Sri Lankan Police Ordinance of 1865 occupying the second place. The only exceptions are Maldives, which lays claim to another dubious distinction – of being the sole country in the Commonwealth with no law governing the police – and Pakistan, which updated its law governing the police in 2002. International instruments also provide a framework for democratic policing and international standards and mechanisms can support greater accountability at home.

National constitutions and police laws govern the conduct of police officers and organisations. Besides establishing the structure of police organisations, police acts – and some constitutions – also define specific arrangements for their accountability, in turn facilitating democratic policing. Constitutions in the region also lay down the basic human rights standards that must be respected by officers as they go about their duties. Setting up oversight bodies such as the offices of the Ombudsman, National Human Rights Commissions and Police or Public Service Commissions through constitutions (or statutes) provides stable guarantees for a more accountable police organisation. Policing in the region is governed by police acts, except for the Sri Lankan Constitution, which has specific provisions on police accountability in addition to a police act. Maldives is the only exception in that it has no police act.

Constitutions

Constitutions provide the stable foundation that effective democracies need by setting out rights, freedoms, systems of governance and policing. Police systems in the region can be broadly classified as centralised or national, and decentralised or federal – it is the relevant constitution that determines this. The Sri Lankan Constitution is the only constitution in the region that contains specific provisions on the appointment of a chief of police, appointments of other police officers, their transfers, promotions and disciplinary action. In all other jurisdictions, the police Acts and police rules deal with such matters.

Notably all the constitutions enshrine a bill of rights; with some granting extremely restricted rights and others guaranteeing a wide range of rights to the people. In all South Asian constitutions, most of these rights are subject to restrictions on grounds such as public interest, order, health, or morality. Maldives is an exception where fundamental rights in the Constitution are subject to a general clause that provides that those rights be guaranteed “except as provided by the law”. Article 15(c), for instance, states: “No act detrimental to the life, liberty, body, name, reputation or property of a person shall be committed **except as provided by law**”.¹³ Strangely enough, law is defined to include the Islamic canon law, the Shari’ah, and government practices, as well as statutes passed by the legislature.¹⁴ This implies that all government practices are protected by the Constitution and that even fundamental rights fail to protect the community from barbarous acts committed by the government or the police acting under government directions. To make matters worse, even the judiciary in Maldives is subject to executive control of the President.

Well-framed constitutional provisions on individual rights, policing and accountability shape sound policing systems. Unfortunately, the South Asia experience is that constitutions are regularly abrogated – that has meant that democracy and good policing are undermined and are constantly at risk. While India continues to be governed by its original Constitution with a secular federal state with a bicameral parliamentary government, all the other countries have had their constitutions suspended or changed fundamentally more than once. The disrespect shown to the supreme law of the land by its elected and military leaders has impacted adversely on the respect for rule of law and the nature of policing.

Police laws

Contemporary policing in the region traces its origins to archaic laws dating back to the late nineteenth century, when the police organisation was the primary agent of colonial repression. The Indian and Bangladesh Police Acts were enacted in 1861 and have the dubious distinction of being the oldest police laws in the Commonwealth, with the Sri Lankan Police Ordinance of 1865 occupying second place. The exceptions are Maldives that lays claim to another dubious distinction – of being the sole country in the Commonwealth with no law governing the police – and Pakistan, which updated its police law in 2002. Some states in India have also enacted new police Acts in 2007¹⁵ after being pressured by the Supreme Court to improve policing, but even these laws have been largely modelled on the existing 1861 Act with minor window dressing for the 21st century.



The preambles¹⁶ to the police Acts in the region and the duties described in these laws for police officers make interesting reading. The preambles of the Indian and Bangladeshi Acts claim to create police that is “a more efficient instrument for the prevention and detection of crime”. The Indian and Bangladeshi laws also specify that police officers are under a duty to “promptly obey and execute all orders and warrants lawfully issued”. There is no provision that mandates the police to maintain good relations with the public or seek community cooperation in their work.

Pakistan is the only country to have attempted to incorporate some of the ideas of rights based policing, constitutional protection and democratic government in its police law. The Pakistani preamble seeks to establish a police organisation that functions according to the “Constitution, law and democratic aspirations of the people”. It mandates the police to be “professional, service-oriented, and accountable to the people”. The duties of the police in *Police Order 2002* are very wide. Among other things, they are required to “promote amity”, “guide and assist members of the public”, “ensure that the rights and privileges, under the law, of a person taken in custody, are protected”, and “ensure that the information about the arrest of a person is promptly communicated to a person of his choice”.¹⁷

Ingredients of a strong legal framework¹⁸

Taking examples from the most progressive police legislation in the Commonwealth, it is possible to identify key elements of a strong legal framework for democratic policing and police accountability. These include:

- ▶ **A human rights mandate in the definition of police duties;**
- ▶ **Clear procedures of democratic control and supervision, which encompass the principles of natural justice and the rule of law;**
- ▶ **Fair, adequate and strong internal disciplinary systems inside police organisations;**
- ▶ **Cooperation between internal and external mechanisms of police accountability;**
- ▶ **At least one independent agency to receive complaints about the police;**
- ▶ **Multiparty oversight over the police by elected representatives in parliaments, legislatures or local councils; and**
- ▶ **Mandatory interaction between the police and the public.**

International standards

Clearly, it is national instruments that ground policing and police accountability within countries. However, international instruments also provide a framework for democratic policing, and international standards and mechanisms can support greater accountability at home.

Each of the countries covered by this report are members of the Commonwealth – a membership based on human rights promises contained in the 1991 Harare Declaration. All state institutions, including the police, must abide by the principles in the Harare Declaration. Similarly, membership of the United Nations is a promise that a country subscribes to the principles of the *Universal Declaration of Human Rights*, 1948. Notably, specific obligations arise only

when treaties and covenants are signed and acceded to, or ratified by countries.¹⁹ All the countries in the region are members of the United Nations, but not all have ratified all the conventions relating to civil and political rights that are relevant in terms of policing. Of the five countries, Pakistan has not ratified or acceded to the International Covenant on Civil and Political Rights (ICCPR); neither India nor Pakistan have ratified or acceded to the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (CAT).

By ratifying a human rights treaty, a state is legally obliged to bring domestic laws and policies in line with agreed standards. The state is also required to report periodically to the bodies that monitor progress towards compliance with treaty obligations. If effective, this reporting system can significantly reduce persistent human rights violations and ensure regular scrutiny of progress towards true human rights protection. In practice, however, the treaty monitoring bodies are hampered by regular delays in state reporting, state reluctance to share complete details about human rights issues, and state unwillingness to implement recommendations.

Using international instruments for local police accountability

Under the international human rights regime, responsibility lies with the state and it must account for violations by police officers of citizens' human rights. When binding international standards are violated or ignored by the police, individuals and organisations can use international mechanisms to introduce or speed up in-country processes for accountability and reform. While some of the UN treaty Committees²⁰ may accept information from civil society, others may also accept complaints from individuals whose rights have been violated.²¹

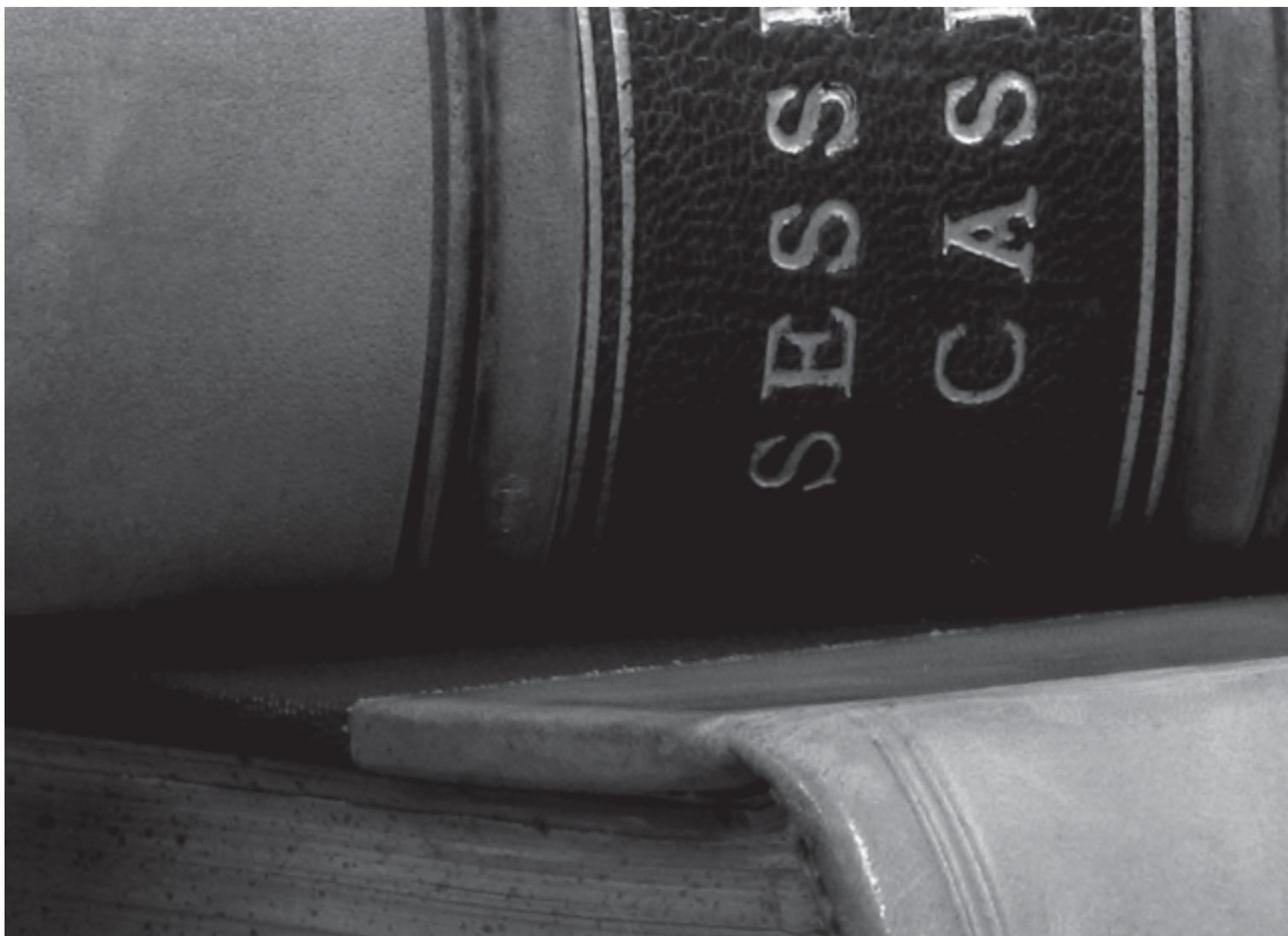
The Commission on Human Rights also asks experts to study particular human rights issues, and has a system of 'special procedures'²². These procedures have occasionally brought police-specific violations of human rights – brutality, summary executions and bias - to global attention. There are also procedures that invoke Commission discussion on human rights issues and public debate on particular issues. Consequences of these processes can be ECOSOC²³ resolutions condemning a state for violations. These high-profile international resolutions are intended to shame the state into correcting the situation.

In Sri Lanka, where police have been involved with large-scale disappearances²⁴ and where "torture is frequently resorted to...by the police",²⁵ five organisations submitted information on the systematic practice of torture to the UN Committee Against Torture. As a consequence, a member of the Committee's Working Group on Enforced or Involuntary Disappearances visited the island in 1999 and the intervention played a significant role in the establishment of accountability mechanisms like the Human Rights Commission, the National Police Commission, the Disappearances Investigation Unit and the Prosecution of Torture Perpetrators Unit.

There are a number of police-specific UN resolutions²⁶ that are intended to assist in treaty implementation. Most notable of these is the UN Code of Conduct for Law Enforcement Officials, which specifically requires that "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."²⁷ This Code of Conduct lays down three core features of acceptable policing: representative of the community, responsive to the community and accountable to the community.²⁸ A representative police organisation requires that staffing reflect the ethnicity, gender, language, caste and religious composition of the population it serves. Responsiveness demands that the police serve the people and not just the government. Most vital is the principle of accountability, which runs through these codes and principles and is a key feature of democratic policing.

A key principle of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials²⁹ is that senior officers are held responsible for foreseeable unlawful use of force or firearms by junior officers, where the senior officers failed to take action. This places a significant responsibility on supervisory ranks to oversee the actions and decisions of police under their command, especially where force may be used; and requires clear managerial accountability in police establishments.

While countries like India and Sri Lanka have developed their own Codes or Guidelines for ethical conduct of officers and use of force, these are not a part of the police legislation. The police do not respect these rules in practice, and there is no system to ensure their domestic compliance. In fact, setting a rather unfortunate precedent in 2006, the Supreme Court of Sri Lanka undermined the entire international human rights protection regime. Sri Lanka has ratified the ICCPR and its first optional protocol that allows the treaty body to take up individual cases and give recommendations to the state. Yet, the Supreme Court observed that neither the international conventions ratified by the government nor the directions of the monitoring bodies were binding on the country. "It [ICCPR] does not have internal effect and the rights under the ICCPR are not rights under the law of Sri Lanka". The court further held that individuals "cannot seek to 'vindicate and enforce' their rights through the Human Rights Committee at Geneva, which is not reposed with judicial power" under the Constitution of Sri Lanka.³⁰ This decision is at absolute odds with accepted international law.



“

Colonial era laws set up a system of regime policing that allows and supports abuse of the community by the police. The laws and the way policing has developed in the region has led to a situation today that is conducive to police malpractice.”

CHAPTER 3



Law versus reality: Public experience of policing

In South Asia, police are often seen as serving the regime in power, and not the people. Public experiences of policing show that police are more often characterised by violations of laws and individual rights rather than protection of them. From murders, to torture, disappearances, excessive use of force, failure to follow due process, biased policing, to corruption – the list of violations committed by the police is endless. Of the many factors and circumstances that contribute to the continuing misconduct and abuses, perhaps what stands out most is impunity – the safety from punishment provided by authorities and supervisors to errant police – and a lack of accountability.

Policing should be focused on service to the community, the protection of rights and freedoms, respect for the rule of law and securing a safe and secure environment for all. Policing in South Asia does not reflect this model. Instead, police organisations serve the ruling regimes, more often violate rights than protect them and act with impunity and disregard for the law. No one can deny the extremely challenging circumstances – both in terms of their service conditions and the external environment – in which the police in the region work, but that cannot be used as a justification for abusive police practices. Again, it would be unfair and incorrect to tar all the police officers with the same brush and categorise them all as brutal or abusive. Yet the public experience of policing is largely characterised by torture, extra-judicial executions, disappearances, excessive use of force, failure to follow due process, bias, discrimination, and corruption. This chapter explores the public experience of policing in more detail. The chapter also considers some of the police experiences that contextualise the style of policing in South Asia – the legal and institutional impunity built into the system, the rampant illegitimate political interference, increasing levels of violent crime and the militarisation of the police.

Torture

Torture is absolutely prohibited in all circumstances by international agreement and national legislation. Yet it seems to be one character that binds South Asian police organisations. Usually the purpose is to extract information or confessions from suspects in custody. At times, torture is also employed against political opponents of the party in power, to intimidate witnesses or deter complaints against the police.

Sri Lanka has attracted much international attention for the levels of torture visited on members of the minority community by the police. The Committee Against Torture has observed that “torture is frequently resorted to.... By the police, especially during the first days following arrest and detention of suspects.”³¹

Sexual violence as torture

In Sri Lanka in March 2001, two internally displaced Tamil women were arrested and subsequently raped by navy personnel and the police. After being raped, both women were paraded naked in front of the policemen and then made to sit in a crouched position; their hands and legs were tied and attached to a pole which was then placed between two tables so they were left hanging. They were in this position for about 90 minutes and were pinched and beaten with a thick wire during that time. The victims were threatened with further torture unless they signed a statement admitting they were members of the Liberation Tigers of Tamil Eelam (LTTE).³² Both women signed the statements.³³

Redress, a UK based human rights organisation, observes that police torture in Bangladesh “has become institutionalised, a practice that is perpetrated regardless of the government in power”.³⁴ In its 2000 country report, Amnesty International observed that victims in Bangladesh were subjected to various kinds of police torture including “beating with rifle butts, iron rods, bamboo sticks, hanging by the hands from the ceiling, rape, ‘water treatment’ in which hose pipes are fixed into each nostril and taps turned on full for two minutes at a time, the use of pliers to crush fingers, and electric shocks”.³⁵

Extra-judicial executions

Killing in the course of duty – when outside the strict ambit prescribed for the use of force – is murder. However, reports of police using extra judicial killings as quick fix justice are all too common in the region. Faced with mounting public frustration at their inability to control crime or effectively police communities, officers seek to solve deep-rooted security and



societal challenges by simply liquidating the problem without the need to go through what they see as the inconvenience of the legal process.

No one is safe

In 2002, a Bangladeshi journalist was charged with sedition, after he was involved in putting together a documentary about the political situation in Bangladesh. His arrest and subsequent torture typifies the intolerance for free expression, bias toward the ruling regimes and conditions in custody in many South Asian jurisdictions. The following quotes are taken from his accounts of his 50 days in police detention.

“There was one squat toilet in the floor of the cell and neither soap nor drinking water. We were told to drink from the toilet tank. On the third day I got dysentery. We slept without blankets on the bare concrete floor. The mosquitoes were relentless.... Every few hours I would be woken up and pulled from the cell to answer questions.”

“I should kill you,” the high-ranking Dhaka policeman said. He drew his pistol from his holster, shoved me to the floor and pressed the muzzle to my temple. “You are a traitor. You have betrayed your country. How dare you describe the nation as a haven for al-Qaeda and the Taliban?” The same high-ranking officer who brandished his pistol would force me to sit on the floor with my legs extended so he could thrash my left kneecap with his baton.”³⁶

In March 2007, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions issued a statement asking the government of Bangladesh to “stop the Rapid Action Battalion and other elite security forces from using murder as a policing technique”. Stating that the “pattern of incidents would suggest that what the police and special forces report as ‘crossfire’ deaths are in fact staged extrajudicial executions”, he observed that “the Government’s apparent indifference to these grave allegations is deeply disturbing. The involvement of the police in extrajudicial executions is of great concern to the international community, and the reputation of Bangladesh is on the line.”³⁷

Disappearances

Almost all the countries in the region throw up examples of disappearances where the fate of the person arrested by the security forces is not disclosed. In some cases, even the fact of arrest may be denied.³⁸ In India, in Punjab between 1984 and 1994, thousands of persons from the minority Sikh community disappeared and were believed illegally cremated as part of a brutal police crackdown to quash insurgency in the state. A recent report by Human Rights Watch slams the Indian Government for hundreds of disappearances and extrajudicial killings in Jammu and Kashmir.³⁹ The Working Group on Enforced or Involuntary Disappearances “stress[ed] that Sri Lanka remains the country with the second largest number of non-clarified cases of disappearances on its list.”⁴⁰ Four Commissions of Inquiry appointed by the Government put the “total number of persons who had disappeared during the period 1988-90 approximately at, 27,200.”⁴¹ The recent resurgence of violence between

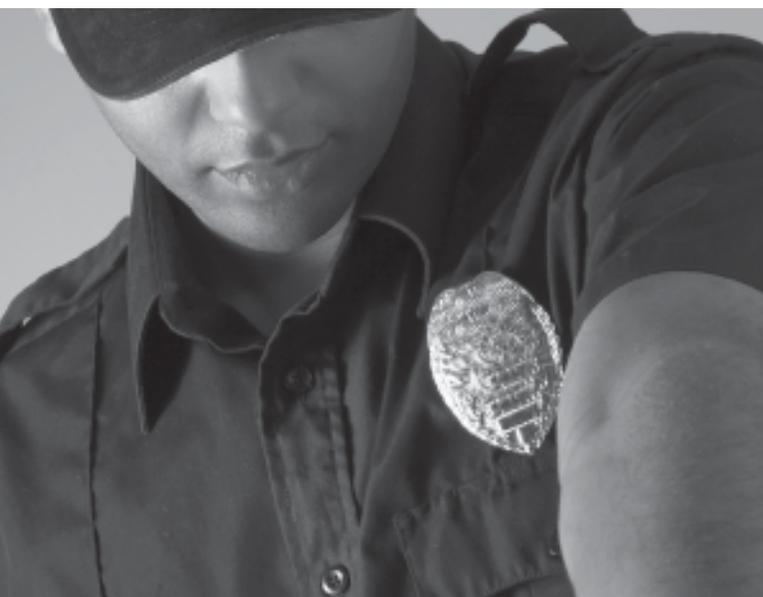
the Sri Lanka Government and the LTTE has given rise to allegations of a new round of disappearances, with the Sri Lanka Human Rights Commission reporting “345 instances countrywide of politically motivated disappearances at the hands of the security forces or by paramilitary forces allegedly tied to the government, or the LTTE.”⁴² In March 2007, the Inspector General of Police in Sri Lanka officially recognised the role of the police and army in disappearances when he announced that more than 400 people including “ex-soldiers, serving soldiers, police officers and underworld gangs and other organised elements” had been arrested since September 2006 on charges of abduction.⁴³

Controlling crime through extrajudicial killings: Pakistan

According to Oneworld, an international electronic civil society network, a report compiled by Pakistan’s Interior Ministry calculates the number of people killed in police encounters as 548 in 2002, with 114 deaths reported in the first six months of 2003. The phrase police encounter is used to describe a police killing that has occurred when an officer claims to have used reasonable force, or acted in self-defence. Oneworld notes that the report records an increase in shootouts between suspects and police, and cold-blooded encounter killings, particularly in the eastern Punjab province, where 1,853 people were killed in police encounters between 2001 and 2003. Oneworld also quotes Deputy Inspector General Police Asif Nawaz as saying, “The police encounters, though inhuman and a clear violation of human rights and law of the land, are the only way to bring heinous crimes under control as the judicial system is too cumbersome to bring the criminals to justice.”⁴⁴

Excessive use of force

Use of excessive force by the police when dealing with public protests and demonstrations is routine across the region, and often results in deaths. In India, police firing to stop public protests in West Bengal⁴⁵ and Orissa⁴⁶ over the past two years has seen over twenty three people killed. In March 2007, the Pakistan police came under criticism for using excessive force against lawyers and other civil society groups protesting the President’s unceremonious removal of the Chief Justice of the Supreme Court. The police also stormed the office of a local television channel that was airing a chat show on the Chief Justice’s removal, and broke windowpanes, scuffled with the staff and cast tear gas shells.⁴⁷ There are allegations that the police assaulted the Chief Justice himself.⁴⁸



Failure to follow due process

Routine disobedience of procedural law is perhaps one of the most common features of abuse of power. This includes detaining people without reasonable cause, or for longer than permissible without bringing them before a Magistrate, secreting them away in unofficial detention areas known as safe houses, or even taking innocent family members hostage to coerce suspects to turn themselves in.

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions observed that in Sri Lanka, “It seems to be a common practice that members of the armed forces and security forces arrest persons without a warrant, subject them to interrogation and take them to the judge days later, after forcing them to sign a statement of good treatment. All these circumstances, together with the fact that the detainees are kept incommunicado, increase the risk of torture.”⁴⁹



Biased and discriminatory policing

None of the police organisations in the region are representative of their communities and as such, demonstrate bias on the basis of religion, ethnicity, gender and political affinity. In June 2007, Sri Lankan police conducted overnight raids in the capital city of Colombo and arbitrarily evicted about 400 people belonging to the Tamil minority population from the city on the grounds of security. Those “who had no valid reasons” for being in the city were made to board buses and leave.⁵⁰

The way that the police respond to a request for help is a key indicator of the quality of any police service. A questionnaire survey of 50 stakeholders (victims, complainants, witnesses and key informants) and 100 police officers of various ranks in Bangladesh conducted by the UNDP revealed that the poor are often pressured by police to withdraw their complaints, which happens always in 21% of cases; quite often in 24% of cases; and often in as many as 44% of cases. Police officers in Bangladesh were also asked if poor, female, and child victims of crime receive enough attention, and whether police interventions were timely and appropriate. Of the 100 respondents, 70 replied in the negative.⁵³

Corruption

A 2002 public perception survey conducted by Transparency International on corruption levels in Bangladesh, India, Pakistan, Sri Lanka and Nepal indicated that people in the region see police as the most corrupt of seven basic public services.⁵⁴

The survey estimated that in 2001, police officers in Bangladesh alone earned nearly US\$250 million in bribes.⁵⁵

In Pakistan, police officials are frequently accused of using threats of abuse to extort money from those in custody and their families. They charge fees to register genuine complaints and accept money for registering false complaints and also for not taking any action against perpetrators. Paying the police to humiliate opponents and to avenge personal grievances is not uncommon in the country.⁵⁶ In Sri Lanka, Senior Deputy Inspector General Seneviratne Banda, who was the Police Ombudsman, was arrested in September 2004 on corruption charges, as he was unable to account for more than INR 3 million in personal assets.⁵⁷ In 2003, in India, many police officials – including the former Chief of Police of Bombay – were arrested for “using their public office for pecuniary gains” (a euphemism for corruption) by providing protection to a con man involved in a fake stamp⁵⁸ scam. Recently, the Gujarat state police in India have been accused of killing an alleged extortionist in 2005, for a fee paid by his alleged victims. To ensure that there was no witness to this murder, the police also allegedly killed his wife and disposed of her body. The police made a case in their favour claiming that the deceased was a terrorist plotting to murder the Chief Minister of the state and was killed in an encounter. The case would have never been investigated, except for the action of the deceased’s brother, who filed a petition with the Supreme Court, which then directed the state government to report on the matter.⁵⁹

Honour above the law

In Pakistan, allegations against the police detail that officers often act or allow themselves to be used as guardians of tradition and morality rather than impartial enforcers of the law. For instance, in *karo-kari* cases,⁵¹ when husbands appear in police stations declaring that they have killed a girl or woman of their family, police often fail to take action, reflecting their unwillingness to enforce the law over custom. Police also appear to cover up fake honour killings. In 1999, a woman and a man were shot dead by her husband who then turned himself in, acknowledging the killings and alleging the victims’ illicit relationship. The wife’s brother registered a complaint of murder against the husband but the copy of the First Information Report, which he received six days later, had distorted his complaint. The police threatened to involve him in a murder case if he did not sign a false statement. The brother alleged that the husband had killed the bank officer for some other reason before killing his wife as a cover up and that he had bribed police to distort the complaint.⁵²

Why does police malpractice continue to take place?

The context in which police officers undertake their daily work is important to explore, to help understand why police misconduct continues to take place. As discussed previously, colonial era laws set up a system of regime policing that allows and supports abuse of the community by the police. The laws and the way policing has developed in the region has led to a situation today that is conducive to police malpractice. This context is characterised by impunity, illegitimate political interference into police operations, public perceptions of increasing crime and the militarisation of the police.

Legal and institutional impunity

Widespread impunity in the region means that there is a boundless tolerance for poor performance by police officers in delivering safety and security and protecting the rule of law. Given that the police are largely governed by the political executive – and in many jurisdictions closely controlled by them – impunity persists not by accident, but by design.

All the countries in the region either have legal provisions that allow impunity or entrenched practice supporting it; many have both. In Sri Lanka, the thousands of cases of disappearances identified by Commissions of Inquiry led to few prosecutions and virtually no convictions - despite evidence of systemic state sponsored violence and in some cases evidence that identified state agents.⁶⁰ In Pakistan, “the failure of the Government to investigate and punish abusive police officers effectively created a climate of impunity for police abuse...[which] was widely considered a great obstacle to ending or reducing police abuse.”⁶¹



Protection from prosecution under ordinary law

Many countries have provisions in criminal procedure codes that provide considerable protection to public servants, including police officials, from prosecution. In India, Pakistan and Bangladesh, these codes provide that police officials cannot be prosecuted without prior permission from the relevant government for acts done in the course of performing their duties.⁶² It is usually very difficult to obtain this permission.

Special/emergency laws

All the countries of Commonwealth South Asia (except Maldives, where no information is available) have special laws that explicitly grant immunity from prosecution to the police and other security force personnel in particular situations. In India, anti-terrorism legislation provides immunity from prosecution and other legal proceedings to security forces for acts done in good faith under the law, including killings.⁶³ In Bangladesh, the Special Powers Act gives the police excessive powers of prolonged arrest and detention without charge, and provides officers with immunity from prosecution or other legal proceedings for anything done in good faith under the law.⁶⁴



Specific indemnity laws passed to condone past acts retrospectively

Many countries in the region have resorted to passing laws retrospectively that indemnify acts committed by security forces. Sri Lanka has passed laws indemnifying the police or other security forces for any act done in good faith to restore law and order between August 1977 and December 1988.⁶⁵ In February 2003, the Bangladesh Parliament passed the Joint Drive Indemnity Act, which indemnifies the police for “arrests, searches, interrogation and [other] steps taken” during the period between 16 October 2002 and 9 January 2003”.⁶⁶ This was in the context of a joint operation of military and police called the Operation Clean Heart in which the joint forces were directed to curb rising crime in the capital city of Dhaka. In this three-month operation, more than 10,000 people were arrested and about 40 people died after soldiers detained them.⁶⁷

Institutionalised procedural techniques for impunity

There are many other well-entrenched informal procedural systems that provide protection to police officers from prosecution for human rights abuse. Human rights violations are systematically covered-up by governments and the police, especially in conflict zones. Other methods that the police resort to include “failure to register complaints; acknowledge detention or to apply other legal safeguards; denial of responsibility; falsification of judicial records and post-mortem reports sometimes by having them carried out at a police hospitals; intimidation of witnesses and complainants; and influencing police inquiries by having them conducted by police from the same branch and delaying their outcome and prosecution.”⁶⁸

Political interference

Political interference in the functioning of the police is another major reason for the existence and continuance of police misconduct. In Sri Lanka, the Basnayake Police Commission observed that there was evidence that “the appointments and promotions are subject to political interference”, which “induce members of the Police Service to invoke the aid on their behalf of the politicians whom they oblige.”⁶⁹ In Maldives, officers work on daily commands of the President⁷⁰ and the absence of any legislation governing their functioning implies that they are in no position to refuse the orders given, whether legal or illegal. There are also widespread allegations of police oppression of political opponents and critical media in Maldives. In India, the police function under the executive control of the state government and the National Police Commission of India has observed that “some state Governments are known to have issued executive instructions restricting the scope of police action even in situations where a specific line of action by police is enjoined on them by law itself”.⁷¹

Increasing violent crime and support for tough policing

In many cases, politicians use crime rates or claims of terrorism to create an environment of fear and insecurity, and put in place laws and policies that support police brutality or extrajudicial killings, as long as suspected criminals and terrorists are the targets. In a Bangladesh operation, where the army was used along with the police to curb rising crime, the public and even the press initially supported the operation, although it later fell out of public favour. In many situations, politicians put pressure on the police to show results,

whether by legal or extra-legal means. In a speech given in 1998, the then Chief Minister of Uttar Pradesh in India, Mr. Kalyan Singh, "I want performance, results. I want you to take a vow that you will create a *dhamaka* [explosion] in the state. If noted criminals can be liquidated in encounters, do it. If you take the life of one person who has taken the lives of 10 others, then people will praise you. And I am here to protect you."

Vast numbers of armed forces in India

Apart from its regular state armed police forces (which has a sanctioned strength of 3,59,667 officers), India has many central para-military forces such as the Assam Rifles, Border Security Force, Central Industrial Security Force, Central Reserve Police Force, Indo-Tibetan Border Police and the *Sashtra Seema Bal*, all under the Ministry of Home Affairs. The total strength of these special police forces was 6,79,629 officers on 31 December 2004.⁷⁹ These heavily militarised police forces are used for policing in conflict areas and are effectively immune from action for misdeeds. They tend to employ a particularly brutal form of policing with absolute impunity.

Police bias and political interference during communal riots⁷²

In Gujarat, in India, where police were accused of displaying acute bias during communal riots in 2002, there were widespread allegations that illegitimate political interference had led directly to the police action. In 2004, the man who had been head of the state intelligence body during the riots, Sreekumar, deposed before a Commission into the riots, alleging lapses in heeding intelligence reports and political interference with the working of the police. In 2005, he was superseded for promotion and subsequently served a chargesheet for leaking "intelligence reports without sanction" to the media⁷³. The intelligence reports referred to in the charge were the instructions given to him by the executive during the riots. Sreekumar recorded those instructions in his diary and claimed that one of those instructions was from the Chief Minister of Gujarat, Narendra Modi, who he says told him to "go soft on rioters of the majority community and target Muslims". Modi also reportedly told him to "not pay attention to *Hindutva* groups that were active in the state".⁷⁴

Militarisation of police forces

Across the region, increasing crime and violent opposition to state policy had led to an increasing government tendency to militarise the police, as well as to use the military for performing police functions. This is occurring at an alarming pace in Sri Lanka in the context of government response to LTTE opposition. Pakistan and India are not far behind, where militarisation has taken place in the context of state response to conflict in specific regions. In Bangladesh, the Rapid Action Battalion (RAB) was created in 2003 with members of the military, police and other law enforcement agencies to provide internal security, recover unauthorised arms, arrest armed criminal groups, assist other law enforcement agencies to maintain law and order, collect intelligence into crime and criminal activity, investigate any offence as directed by the government, and perform any other duty as assigned by the government.⁷⁵ According to the Minister of Law, Justice and Parliamentary Affairs, the Bangladesh police were inadequate to maintain law and order and since "it is not possible to raise the whole police to a sufficient standard", the Government was forced to create the RAB. Within two years, at least 190 people had died in RAB custody.⁷⁶ RAB publicised the majority of deaths in the media as killings in crossfire, with shockingly similar stories, such as "RAB arrested a 'top criminal' and took him with them to retrieve illegal arms or to arrest cohorts, and the person was killed when the RAB unit came under attack."⁷⁷ The State Minister for Home Affairs supported the actions of the RAB and said "criminals cannot have any human rights". Following a growing trend across many countries in the Commonwealth, he then attacked "the human-rights organisations for criticising death of criminals in 'crossfire'... When criminals are being killed in encounters, human-rights organisations speak out. But when policemen get killed by the criminals, no one speaks about human rights."⁷⁸

CHAPTER 4

Democratic policing: The way policing should be

Democratic policing – as opposed to regime policing – is policing based on norms and values derived from democratic principles and is a widely accepted approach to contemporary policing. The model of democratic policing that the report promotes envisions a system of policing where the police are subject to the rule of law and responsible to protect human rights, accountable to a variety of institutions, transparent about policies, decisions and actions taken in most spheres of their work, responsive to the people they serve and representative of the people they serve.

FEUDAL FORCES: DEMOCRATIC NATIONS

Democratic policing is policing based on standards and values derived from democratic principles and is a widely accepted approach to contemporary policing. Democratic policing is the modern alternative to regime style policing carried over from colonial days, and is reflected in both the way the police is set up and the way they work. Democratic policing is a flexible model that can be adapted to different systems, organisational structures and policing strategies in different jurisdictions. Accountability – to the law, to democratic government and to the community – is at the heart of democratic policing.

What does your police look like?	
Regime police	Democratic police
Answer predominantly to the regime in power and its bureaucracy, and not to the people.	Accountable to the law, and democratic government structures.
Responsible for controlling populations, rather than protecting the community.	Serve the public and protect, rather than impede, human rights and freedoms of all. Create a security environment which best promotes democracy.
Remain outside the community.	Communicate with and serve members of the public. Transparent in their activities.
Tend to secure the interests of one dominant group.	Responsive to vulnerable groups, and only adopt methods of functioning that accord with the rule of law.

Putting police accountability into practice⁸⁰

Accountability is central to good governance and all state structures in a democracy must be accountable - this means that they must take responsibility for decisions and actions taken. Accountability of the police is a particularly crucial issue because police are responsible for the safety and security of the public, and are also authorised to use force and, in some cases, can deprive people of their lives and liberty. Police officers must account both for their performance and their conduct in performing those functions.

In line with the checks and balances that characterise democratic systems of governance, democratic policing requires that the police are accountable in a variety of ways.

Firstly, in a democracy, police accountability means the police must be held accountable to:

- ▶ the law, both in terms of human rights standards and the rule of law;
- ▶ the democratically elected government of the day;
- ▶ the people they serve, especially victims of crime and the vulnerable; and
- ▶ professional codes and standards of behaviour within the police organisation, senior officers, and professionals within the justice sector.

Secondly, democratic police must account for various aspects of their actions and decisions. Police must account for:

- ▶ conduct, individually and organisationally;
- ▶ the performance of the police organisation - how they attempt to protect the public and keep people safe, how they respond to reports of crime and the results they achieve in terms of public safety;
- ▶ adherence to laws and policies; and
- ▶ use of state resources.



Dimensions of police accountability

There are commonly four types of accountability or control over police organisations:

State control: The three branches of governance – legislative, judicial and executive – provide the basic architecture for police accountability. In a thriving and active democracy, the police are likely to be regularly held to account in all three halls of state. For instance, police chiefs are often required to appear in the legislature and answer questions from the elected representatives of the citizenry. Or they may be subject to questioning by other branches of government such as Auditors-General or Finance Departments. Where there is a strong and independent judiciary, cases may be brought in courts regarding police wrongdoing, with possible compensation for those affected, or to verify or amend decisions made by police officials.

Independent external control: The complex nature of policing and the centrality of police organisations to governments require that additional controls are put in place. Institutions such as Human Rights Commissions, Ombudsmans and public complaints agencies can oversee the police and limit police abuse of power. At least one such independent, civilian body is desirable in any democracy, although many Commonwealth countries in fact enjoy the services of a number.

Internal control: All “well functioning accountability systems are grounded, first and foremost, on internal police mechanisms, processes, and procedures.”⁸¹ Reliable disciplinary systems, appropriate levels of training and supervision, and systems for monitoring, evaluating and recording performance and crime data all create the necessary apparatus to hold policing to a high standard.

Social control or social accountability: In a democracy, holding the police accountable is not merely left to formal institutions that represent the people, but is also the right of ordinary people themselves. The media, community groups (such as crime victims, business organisations, and local civic or neighbourhood groups), and individuals all monitor and comment on police behaviour to spur them to better performance.

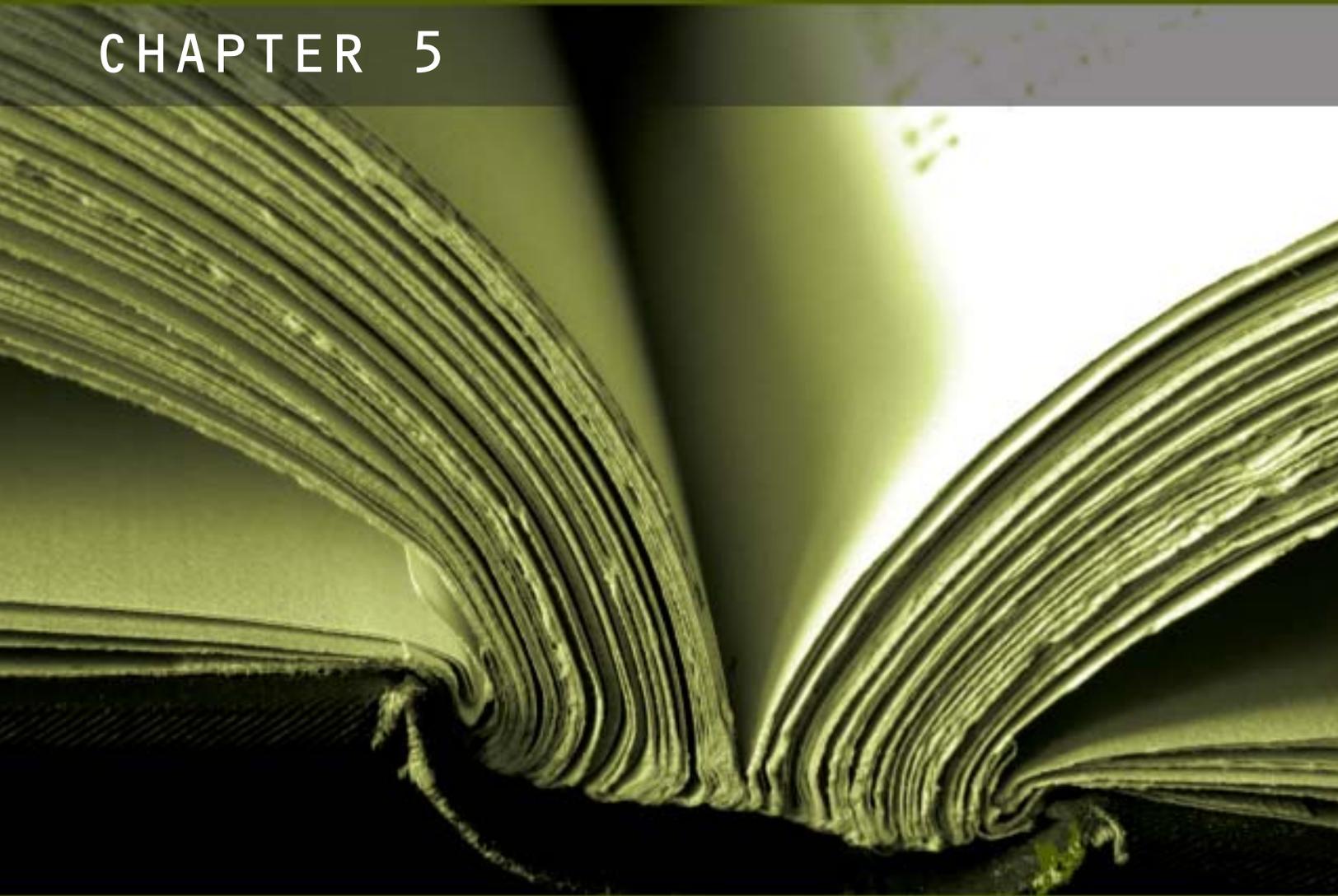
A model for police accountability: 3 + 1

There is no hard and fast rule about the form that good police accountability must take. Much depends on the circumstances of each country and the nature of the existing relationship between the police and the community. CHRI advocates that the basics of sound accountability required in *most* circumstances are vigilant internal processes and procedures coupled with *external oversight* by the three wings of government plus one independent body.

An effective model includes oversight by:

- ▶ democratically elected representatives (in national parliaments if police are structured at the national level, in state legislatures if police are organised at the state level, and in local councils if policing is organised at the local level);
- ▶ an independent judiciary;
- ▶ a responsible executive (through direct or indirect policy control over the police, financial control, and horizontal oversight by other government agencies such as Auditors-General, Service Commissions and Treasuries); and
- ▶ at least one independent statutory institution, such as an Ombudsman or a Human Rights Commission or, ideally, a dedicated body that deals with public complaints about the police.

CHAPTER 5



Police reform measures in the region: A brief history

All governments in the region – except Maldives – have constituted specific commissions or committees to examine policing and suggest reforms. Prior to 2000, committee report after committee report was completed, only to sit gathering dust on bureaucrat shelves, with no chance of implementation. However, this trend is changing. Pakistan and Sri Lanka have taken concrete steps to bring about legislative and constitutional change, although good reforms are often later diluted or undermined. The other countries in the region are debating, planning and engaging in reform to different degrees. A problematic characteristic of the reform processes in the region is the complete absence of public participation. Furthermore, lack of political will still remains a problem – both in implementing and in committing to sustaining reform.

The need for police reform has been recognised in all the countries of South Asia. All the governments in the region – except Maldives – have constituted specific commissions or committees to examine policing and suggest reforms. Prior to 2000, committee report after committee report was completed around the region, only to sit, gathering dust on public service shelves, with no chance of implementation. However, this trend is changing. Pakistan and Sri Lanka have taken concrete steps in bring about legislative and constitutional changes, although good reforms are often later diluted or undermined. The other countries in the region are debating, planning and engaging in reform to different degrees. A problematic characteristic of the reform processes in the region is the complete absence of public participation. The state centric reform processes have shaped policing in secrecy, without any public consultation or inputs. Furthermore, lack of political will still remains a problem – both in implementing and in committing to sustaining reform.

Moving back and forth: Pakistan and Sri Lanka

Pakistan has seen a spate of commissions that recommended police reform, including the Police Commission headed by Mr. Justice J.B. Constantine between 1961 and 1962, the Police Commission led by Maj. General A.O. Mitha that ran from 1968 to 1970, a one man committee of Mr. G. Ahmed in 1972, the Foreign Experts Committee composed of Romanian Police Experts in 1976, the Police Reforms Committee chaired by Mr. Rafi Raza, also in 1976, the Police Committee headed by Mr. Aslam Hayat in 1985 and finally the Police Reforms Implementation Committee, under M.A.K. Chaudhry, in 1990. Not one of the major recommendations put forward by these committees was put in place until 2002.

Pakistan's Police Order of 2002 is a part of a process initiated under an Asian Development Bank funded criminal justice sector reform programme. The new law put in place mechanisms and processes to institutionalise police reform by checking political interference with police functioning and ensuring accountability for performance and misconduct. The reform process was derailed when provincial governments refused to implement the Police Order, arguing that federal law encroached upon their constitutional responsibility to maintain law and order. After much pressure from the provinces, the President agreed to amend the law in 2004 and many of the provisions that limited the scope of illegitimate political interference and police accountability were diluted.

Sri Lanka has also had its share of commissions on police reform, but it was only in 2001 that the Government sought to take firm action, by constitutional amendment. The 17th Constitutional amendment, sought to depoliticise the process of appointment to independent commissions (including the National Police Commission and National Human Rights Commission) as well as certain individual posts (including the Inspector General of the Police). The amendment did this by creating a Constitutional Council⁸³ that would make or approve critical appointments. Consisting of ten members – the Prime Minister, the Speaker of Parliament, the leader of the opposition, one nominee of the President, five nominees recommended jointly by the Prime Minister and the leader of the opposition and one who represents minority parties – this Council was intended to work in a non-partisan manner.

Democratic policing in undemocratic societies

In a regional conference on policing in 2007, delegates from Pakistan pointed out that it was the military regime – and not democratic governance or public pressure – that introduced provisions for public oversight over the police. An interesting observation made at the meeting was that while democratic governments in South Asia were resistant or slow to reform, governments that were not chosen by popular mandate (the military dictatorship in Pakistan and the caretaker government in Bangladesh) were more proactive and willing to put in place police and other administrative reforms. It was suggested that this is an attempt to gain legitimacy. Notably, international experts at the meeting were clear that true democratic policing could exist only in a democratic society."⁸²



The Council and the National Police Commission (also created through the 17th amendment) together created a strong network of mechanisms to check political interference in the matters of appointments, transfers and disciplinary actions against the police. The National Police Commission is responsible for the appointment, transfers, promotions and disciplinary matters relating to all police officials except the IGP, and the Council approves the decision of the President for the appointment of the IGP. Initially, these bodies worked well and the levels of illegitimate political interference in policing dropped.⁸⁴

Things began changing in 2005, when the term of the original members of the Constitutional Council expired in March that year. The minority parties failed to agree on the name of the member to be nominated by them. The Prime Minister and the leader of opposition had already suggested the names of the rest of the members to the President. However, the President refused to appoint any member to the Council until the minority parties agreed to nominate their member. This had the flow on effect of making appointments to other commissions problematic, as their members had to be appointed by the Council. In 2005, the Chair of the National Police Commission said that increasing crime rates and law and order issues were the result of the absence of the Constitutional Council.⁸⁵ In April 2006, the President, instead of appointing the already nominated members to the Constitutional Council, chose to unilaterally appointment members to the Commissions, including the Police Commission. With strong allegations that the appointees are the supporters or personal friends of the President, the Commissions have lost much of their credibility.⁸⁶

Sri Lanka's efforts to reform policing – a short history

In 1970, the Basnayake Police Commission went to great lengths to analyse the issues facing the police. The Commission produced reworked legislation that aimed to rectify many shortcomings in the existing 1865 law. The Jayasinghe Committee of 1995 reiterated the concerns and recommendations of the Basnayake Commission. However, nothing much was done to check illegitimate political interference into police function prior to the 17th Constitutional amendment in 2001.

Notably, international pressure through the UN treaty bodies and their special mechanisms resulted in some accountability mechanisms being put in place. These mechanisms have been an exercise in frustrated hope, as they have been rendered ineffectual by a lack of political will:

- ▶ Established on 20 November 2000, the Permanent Inter-Ministerial Standing Committee on Human Rights Issues was mandated to consider issues and set policy on human rights violations in Sri Lanka.
- ▶ Sri Lanka ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994 and subsequently passed the CAT Act of No. 22 of 1994. To ensure efficient prosecution in torture case, the government created the Prosecution of Torture Perpetrators Unit (PTP Unit) within the Attorney General's department. However, this unit only exists on paper and does not have its own permanent staff. Torture cases that fall within the jurisdiction of the PTP Unit are handled by five counsels who also take on other criminal cases.⁸⁷

Police reforms in India: Can do, but won't do!

India has witnessed many initiatives for reforming the police, including setting up of various Commissions. However none of the important recommendations of these Commissions have been implemented. The first Commission at the national level, the National Police Commission (NPC), sat between 1979 and 1981, and provided detailed recommendations to reform the police in India. It also produced a Model Police Bill based on its recommendations. The Government of India set up the Ribeiro Committee in July 1998, in response to the interim directions of the Supreme Court in a public interest litigation concerned with police reform. In January 2000, the Government once again set up another Committee,

this time under the chairpersonship of Mr. Padmanabhaiah, who was charged with devising methods of “insulating the police from politicisation and criminalisation” and suggesting reforms to ensure “accountability of police” and “redressal of public grievances”.⁸⁸ The Padmanabhaiah Committee submitted its report in August 2000, but the recommendations of this report have not seen the light of day.

Police reform in Maldives

Police reform in Maldives is taking place within the broader context of the government's Roadmap for the Democratic Reform Agenda, which pictures sweeping governance and justice sector reforms ahead of planned 2008 elections. The President of Maldives committed to reform of the governance structures in the country after being pressured by the international community. A key aspect of reform is the drafting and implementation of police legislation – to provide the police organisation with a legal foundation. Unfortunately, the process of putting this law together has taken place in a government vacuum, and there has been no public consultation or community involvement in the process.

India's federal structure, which gives the power of policing to state governments, impacts on the low take-up of police reform initiatives. In 1997, the Union Home Minister wrote a letter to all states requesting that they implement the basic recommendations of the NPC that dealt with illegitimate political interference and police accountability. Not one Chief Minister replied to this letter, let alone implemented the recommendations. There have also been a number of State Commissions that have looked into police reforms, but the story is the same – the states have failed to implement the recommendations of their own committees.

In September 2006, a major Supreme Court decision rocked India's police reform boat. Giving a decision in a public interest application filed in 1996 by two retired police officers, the Court directed all state governments and the federal government to institutionalise police

accountability by passing new laws or complying with seven directives laid down by the Court to check illegitimate political interference in police functioning and ensure police accountability. However, states have continued to resist reform even in the face of the Court's directions. A number of states have approached the court to review its decision, while others are enacting hastily drafted laws that reinforce colonial policing practices in the garb of police reform. The vast majority of the reform processes that have taken place in response to the Court decision have taken place in absolute secrecy and without any public consultation or input.

Increasing donor interest in police reform

Donors in the region are increasingly supporting justice sector reform and stressing accountability. This reflects the growing international recognition of the importance of good governance in sustaining development and deepening democracy. Multilateral agencies, including the World Bank and the International Monetary Fund, have assisted countries in developing Poverty Reduction Strategy Papers that argue for comprehensive criminal justice reform within a larger poverty-reduction framework. While the Asian Development Bank supports the Access to Justice Program in Pakistan, the United Nations Development Programme (UNDP) and the Department For International Development (DFID) have launched a police reform programme in Bangladesh together, in collaboration with both the Government and the police. UNDP is also supporting the enactment of a police act in Maldives and is working with the Indian Government on a wider access to justice programme that covers policing. The imprint of donors can, however, be as problematic as earlier colonial legacies if donors themselves do not adhere to international good practice and emphasise the critical importance of community consultation.

PART 2: ACCOUNTABILITY

The strength behind the force

“ Political interference with policing is one of the biggest challenges of South Asian policing. ”

CHAPTER 6



Moving beyond control and interference: Accounting to the executive

In South Asia, the political executive closely controls the police by retaining with itself powers of appointment, transfer, promotion and disciplinary action against police officers. Through these powers, they effectively control the functioning of police officers. Across the region, reform commissions have clearly pointed out political interference as a major problem confronting policing and suggested ways to overcome. None of the recommendations were implemented until 2001 when Sri Lanka made a departure, followed by Pakistan in 2002, but since then the political executive in these countries has managed to roll back some of the reform initiatives.

In a democracy, all agencies of the state, including the police, are responsible to the elected political executive. The political executive, as the representative of the people is mandated to ensure to the people a safe and secure environment, with the help of a competent and efficient police service. In fact, a Cabinet Minister is usually appointed as the political head of the police. In India, Bangladesh and now Maldives, the Minister of Home Affairs is in charge of the police, while in Pakistan, it is the Minister of Interior. In Sri Lanka, the political head of the police is the Minister of Defence, Public Security, Law and Order.

Ideally, the executive is responsible for providing strategic direction and policy to the police in performing their functions. However, when it comes to the implementation of the policy and operational matters of the police, different jurisdictions have experimented with different models. In Commonwealth jurisdictions that pride themselves on having a democratic police service, the concept of operational independence or operational responsibility of police has been established. Though not a rigid concept, at a minimum, it signifies that though the political head decides the policy and strategy of the police and might also have a role in setting priorities of the organisation; it is the chief of police who takes actual decisions at the ground level without political interference. Notably, experts caution against the use of the term operational independence as it may convey an idea of police officers being beyond inquiry or review of their actions. The term operational responsibility better captures the idea that police are free to exercise their responsibilities in accordance with the law but are also capable of being held to account afterwards for the manner in which they exercise them.⁸⁹

The National Police Commission of India recognised that “while attempting to insulate the police...we should not confer a totally independent status on the police which would then make it function as a ‘State within a State’”. The Commission advised devising “a system in which police will have operational independence, particularly in matters in which their duties and responsibilities are categorically specified in law with little or no room for discretion and at the same time their overall performance can be effectively monitored and kept within the framework of law by an agency which will involve the Government also.”⁹⁰

Illegitimate political interference: the bane of South Asian policing

In South Asia, the political executive closely controls the police by retaining powers of appointment, transfer, promotion and disciplinary action against police officers. Through these powers, they effectively control the functioning of police officers. Political interference with policing is one of the biggest challenges of South Asian policing. Each of the different commissions on police reform across the region identified political interference as a huge obstacle in ensuring professional, unbiased, and accountable policing to the people. The National Police Commission of India observed back in 1979 that the “phenomenon of ‘interference’ with police is ... linked with the existing system of control over the police by the political executive”⁹¹ and argued that this “has led to gross abuses, resulting in erosion of rule of law and loss of police credibility.”⁹²

The Pakistan Police Committee of 1985 also made similar observations. “There are constant complaints...of outside interference in the day to day working of the police force, specifically with requests for transfers and promotions of individual officers and men. This practice is adversely affecting the morale and discipline of the force. There is also interference in the conduct of investigations which leads to increase in crime and opens the floodgates of corruption.”⁹³

Colonial laws assist unscrupulous politicians

The police acts in India, Pakistan and Bangladesh regulate the relation between the executive and the police. In Sri Lanka it is the Constitution that does this. Maldives is the only country that has no legal framework governing the relationship between the two.

Pressuring officers to choose between the “law” and the “order”

In the state of Gujarat in India, after the anti-Muslim riots in 2002, many senior police officers who had taken firm steps to stop the attacks and had registered cases against political leaders belonging to Hindu religious political parties were subsequently punitively transferred. Human Rights Watch documented the transfers of police officers in a report that explored state participation and complicity in the violence.⁹⁴ One example was Police Superintendent, Rahul Sharma, who successfully thwarted an attempt by a mob to attack a madressa (Islamic school) and rescued 400 students. He also registered criminal cases against the attackers, despite pressure from local Bhartiya Janta Party (at the time the political party in power federally and in the state) leaders to turn a blind eye. Instead of being rewarded for his correct actions, he was transferred five times in a year. Himanshu Bhatt, Superintendent of Police at Banaskantha, known for his abilities and professionalism, was transferred to Gandhinagar after he suspended a Police Sub-Inspector for not taking action against a mob that had torched shops and houses. Bhatt had refused to withdraw the suspension orders in spite of pressure from higher-ups.⁹⁵

In India and Bangladesh, the police acts provide that the superintendence of the police vests in government. In a democracy, superintendence of the police force by the elected representatives would normally be a mechanism to ensure the accountability of the police. However, the police Acts in these countries fail to define the term superintendence and this has meant that executive control has been characterised as illegitimate political interference, rather than as a mechanism to ensure accountability.

In India most states have either adopted the national 1861 Act or have enacted laws modelled on the national 1861 Act. This means that the executive's control over the police is strong. The Bombay Police Act of 1951 went a step beyond the 1861 Act by stating that “any control, direction or supervision exercisable by any officer over any member of the police force shall be exercisable subject to such superintendence” by the executive.⁹⁶ The extended clause of the Bombay law effectively gives power to the state government to intervene in all matters relating to police work – administrative as well as operational – and implies that an order issued by any senior police officer to his or her junior could be rescinded or amended by the executive. All orders regarding transfers, postings, suspensions, rewards and punishments in respect of police officers issued by the police leaders could be interpreted as falling within this clause. Similar clauses have been incorporated in the Karnataka Police Act of 1963, and the Delhi Police Act of 1978. Some of the states that have recently enacted new laws – after the Supreme Court directed state governments to reform the police – have also, in clear defiance of the order, refused to let go of executive operational control of the police. The Kerala Ordinance of 2007, for example, states that the “administration of police throughout the State shall, subject to the control of the Government, be vested in the Director General of Police.”

Sri Lanka also faced similar problems of political interference prior to 2001, but here it was the Constitution, and not the Police Ordinance of 1865, that allowed the interference. Over the years, Sri Lanka has witnessed the promulgation of three Constitutions, each of which introduced far reaching changes in the areas of appointment and disciplinary control of public officers including the police. The first Constitution, known as the Soulbury Constitution, vested the appointment, transfer, dismissal and disciplinary control of public officers in the Public Service Commission, permitting the Commission to delegate any of these powers to any public officer. With the promulgation of the Republican Constitution of 1972, the Public Service Commission system in Sri Lanka was abolished and the Cabinet of Ministers was vested with all powers over public officers. In practice, the Cabinet retained these powers in respect of the senior officer grades, while delegating other powers to Ministers, resulting in widespread illegitimate political interference.

Emerging good practice

Prior to 2002, the legal basis of policing in Pakistan was similar to India and Bangladesh, as it shared the same founding 1861 police law. The Pakistan Police Order of 2002 brought in a fresh wave of reform. This law as amended in 2004 clearly defines “superintendence” to mean “supervision of Police ... through policy, oversight and guidance and specifies that while exercising it, the government must ensure “total autonomy” of the chief of police in “operational, administrative and financial matters”.⁹⁷ It also states that the power of superintendence “shall be so exercised as to ensure that police performs its duties efficiently and strictly in accordance with law”.⁹⁸ By clearly defining the scope and meaning of the term superintendence by state governments, the 2002 Pakistan law aims to check illegitimate political interference with the working of the police in the name of exercising their powers of superintendence.

The 1978 Constitution reconstituted the Public Service Commission, but only as an institution subordinate to the Cabinet, the Commission losing the independence that it enjoyed under the Soulbury Constitution. The Cabinet reserved to itself powers of control over the senior-grade officers and delegated powers over the other officers to the Commission. However, the Cabinet further directed the Commission to delegate even these powers to Secretaries of Ministries and to Heads of Departments. Consequently, the Commission had no original powers of its own and it derived only appellate powers granted directly by the Constitution. However, after much pressure, the Cabinet agreed that a Secretary to a Ministry, who was a nominee of the Minister, might be susceptible to political influence and the Commission withdrew the powers delegated to the Secretaries from February 1992.⁹⁹ In 2001, the 17th amendment to the Constitution created a separate and independent National Police Commission to check illegitimate political interference but the executive has subverted even that process by manipulating the appointments to the Commission (as described in Chapter 5).

Curbing political interference: reform initiatives in the region

The response to the cry for better policing is a telling marker of the political will to reform and the levels of resistance encountered. Across the region, reform commissions have clearly pointed out political interference as a problem and suggested ways to overcome. None of the recommendations were implemented until 2001, when Sri Lanka made the first move towards reform, followed by Pakistan in 2002.

Pakistan and Sri Lanka are the only countries in the region that have undertaken legislative reform to check illegitimate political interference. While Sri Lanka created the National Police Commission as a civilian oversight structure to govern the police in an independent and transparent manner, Pakistan brought in a new police law. Although the structures established by these legislative reforms have been criticised either for their limited mandate or for the lack of their effectiveness, there is no denying the fact that even these structures, if implemented properly, could go a long way in checking political interference with the working of the police.

Implementation requires political will: Pakistan – a case study

The Pakistan Police Order of 2002 established specific institutions to curb illegitimate political interference and ensure police accountability. It provided that the appointments of the heads of the police organisation at the provincial and the district level would be more transparent and that they would enjoy security of tenure. Public Safety Commissions were required to be



created at the district, provincial and federal levels. These Commissions were mandated to provide policy guidance to the police through approval of annual policing plans at each level and to insulate the police from political pressure at all levels. In order to ensure insulation of the police from illegitimate political interference, the Police Order 2002 empowered these Commissions to “provide recourse” to police officials at different levels “for reporting any unlawful or malafide order or request for police support from any authority” and to “give a decision” on such reports or complaints, which would prevail over “any other order or request by any other authority/agency”.¹⁰⁰

The 2004 amendments dramatically diluted the law. Although the Commission still has the power to “take steps to prevent the Police from engaging in any unlawful activity arising out of compliance with unlawful or malafide orders,” there is nothing in the law that empowers it to intervene and “give a decision...which shall prevail”.¹⁰¹ Clearly, in the absence of such statutory powers police will be coerced into obeying political masters. However, even with the watered down provision, the legal position in Pakistan is still better than that of Maldives, India and Bangladesh, where there are no laws to prevent illegitimate political interference. The issue in Pakistan is implementation of the law; few Commissions have been established and those that do exist cannot function properly because of lack of funds and cooperation.

Appointment process of the chief of police diluted

Pakistan’s Police Order 2002 also introduced provisions to ensure that the appointment of the chief of police was no longer in the hands of provincial governments alone. The relevant provincial government would appoint its chief of police out of a panel of three police officers recommended by the National Public Safety Commission, from a list provided by the federal government. However, these provisions were watered down by the 2004 amendments. Now, only the governments at the federal and the provincial level have any say in matter of appointment of the police chief and the role of the National Public Safety Commission has been done away with.

Making “security of tenure” tenuous

The provisions in the 2002 law that recognised the importance of securing tenure of the police chief and the head of the district police to ensure that he or she can function without fear or favour were also diluted in 2004. The 2002 law allowed the provincial government to transfer the police chief before the completion of his or her tenure with the agreement of the Provincial Public Safety Commission for “unsatisfactory performance of duties”.¹⁰² In 2004, this was amended to deny the Public Safety Commission any role in the premature transfers of the police chiefs and instead the federal and provincial governments decide the matter between them. Similarly, under the amended law, the provincial government has been given greater role in posting and transfers of the head of district police.

Significantly, despite all these changes, even the diluted law has not been implemented in its spirit because provincial governments do not own the reform process initiated by the President of Pakistan, and are not committed to it. The Pakistan case study clearly shows that reform processes cannot be thrust upon the political leadership. Without local political ownership of the reform process, the letters of law remain just letters and never translate to reality.

National Police Commission of Sri Lanka: Subverting the reform process

Appointed in November 2003, the independent National Police Commission enjoys powers of appointment, transfer, promotion, and disciplinary action in relation to all police officials except the Inspector General of Police (IGP). With respect to other officers, the Commission has wide authority to formulate schemes of recruitment and training and is tasked with the improvement of the efficacy and independence of the police service. It is also empowered to look at codes of conduct and the standards for promotions and transfers. Interference with the functioning of the Commission is an offence. The Commission must exercise its main powers of appointments, promotions, disciplinary control and dismissals in consultation with the head of the police.

One of the major criticisms of the law establishing the National Police Commission was its failure to provide for an apolitical appointment of the chief of police and set security of tenure for the chief. The President recommends a candidate for chief of police to the Constitutional Council, and the Council approves the selection. Critics note that the Constitutional Council is not required to seek the view of the National Police Commission in appointing the IGP.

In 2003, the Commission invited much criticism by delegating its powers of transfers back to the IGP¹⁰³ who was empowered to further delegate these powers. It was argued that the Commission was created to insulate the police from political pressures and delegation of its powers back to the head of the police (who is still appointed by the political executive) would frustrate that purpose. Admitting that it was difficult for the Commission to administer the police organisation, commentators argued that instead of exercising its authority to delegate powers to the Inspector General of Police, the Commission should have delegated its powers to a Committee of the Commission (not consisting of members of the Commission), that it could appoint.¹⁰⁴

In 2004, the Commission responded to its critics and altered its delegations. The powers of appointments, promotions and transfers (but not disciplinary control) of officers including and below the rank of Sub Inspectors were given to a three member Committee of the Commission headed by a retired High Court Judge. However, senior officers of specified ranks could still complete transfers on grounds of exigencies of services and contemplated disciplinary action with respect to these ranks. Also, powers of disciplinary control with respect to officers below the rank of Inspector of Police were once again delegated to senior officers. With respect to appointment, promotions, disciplinary control and transfer of all officers of and above the rank of Inspector of Police, the National Police Commission retained all its powers.

Despite criticisms, the Commission was successful in checking political interference in police functioning until the first membership term expired and the new members were political Presidential appointees.

Two steps forward and one backward

In December 2002, the National Police Commission in Sri Lanka put its foot down and rejected the politically motivated transfer orders of 60 officials. A national daily reported that the transfer list of these officers "was prepared at the request of certain Ministers and government party MPs [Members of Parliament]". It added that this was "the first occasion when the Commission has issued orders countermanding the orders of the Police Department."¹⁰⁵ However, after the Commission was reconstituted with appointees of the President in 2006, there was a spate of transfers including "the transfer of senior officers instrumental in successfully carrying out anti-crime drives. Some reports state that these senior officers are being transferred for offending powerful figures through their strict enforcement of the law."¹⁰⁶

Some international models of executive–police relationship¹⁰⁷

All Commonwealth countries have grappled with the problem of political control and interference. Many have devised structures to check political control and interference. As well as the models – flawed as they may be – of Pakistan’s 2002 Public Safety Commission and Sri Lanka’s National Police Commission, there are many other examples that can be considered across the rest of the world.

Delineating the roles and responsibilities of the police and the executive

An important strategy to check unwarranted political interference is to clearly specify the roles and responsibilities of the political executive and the police, and their respective domain of operations with respect to each other.

The role of the political executive – policy guidance and strategic planning

In providing policy directions as well as resources for policing, contemporary police acts give different roles to different governments. Some of these refer to the policy guidance role of government in terms of responsibilities of Ministers and lay down how these responsibilities should be discharged. This is the pattern in Australia, New Zealand, Canada, South Africa, England, Wales and Northern Ireland. In England and Wales, the Home Secretary determines universal policing objectives, directs police authorities to establish performance targets, and determines cash grants for police authorities through his or her three-year rolling policing plan. In South Africa, the Constitution makes it the political responsibility of the Cabinet Minister responsible for policing to “determine the national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces”.¹⁰⁸ In Australian states that have civilian oversight bodies to oversee the police, the Police Minister often collaborates with the oversight agencies when determining policy matters.

Retaining administrative powers with the police chief

One of the important ways to balance the police-executive relationship requires exclusion of the political executive from decisions around hiring, assignment, deployment and promotion.¹⁰⁹ These decisions with respect to all police officers except the senior most (like the Commissioner/Chief Constable and Deputy Commissioner/Chief Constable), should be the “exclusive prerogative of the head of the police service.”¹¹⁰

Mechanisms to monitor police adherence to policy

In a comprehensive accountability system, the police report to governments with plans for achieving policy goals, results and performance, the way they deliver their services and their use of government funds. Some governments have established dedicated mechanisms or institutions that enable them to closely monitor police performance and hold police accountable for adherence to policy. For instance, In England and Wales, Her Majesty’s Inspectorate of Constabulary oversees all police forces and reports to the Home Secretary on the efficiency and effectiveness of police forces. It conducts inspections to ensure that agreed standards are achieved and maintained; good practice is spread; and performance is improved. It is also expected to provide advice and support to the tripartite partners (Home Secretary, police authorities and police forces) governing local police forces.¹¹¹

Independent structures to check political interference

Countries like the UK and Canada have established independent buffer bodies, comprising a majority of non-elected members to insulate the police from partisan political influences. Commonly known as Police Authorities or Boards, these agencies seek to protect the police from direct political control and interference by ensuring that they, and not only the elected politicians, provide policy directions and approve police budgets. These bodies are empowered to provide policy guidance only and the police retain operational independence.

In England and Wales, all 43 police organisations are governed by what is commonly known as a tripartite structure, which distributes responsibilities between the Home Office, the local police authority, and the relevant chief constable. It provides accountability to Parliament through the Home Secretary (who has responsibility for policing policy including centrally-imposed key priorities that are formalised within a National Policing Plan), and to local communities through the local police authorities, which comprise of elected local councillors, magistrates and members of the public. These authorities frame local policing priorities and determine the arrangements for consultation between the police and public. It is these authorities that are responsible for appointment and dismissal of the chief constable (subject to ratification by the Secretary of State). They also advise on budgeting and resource allocation, and produce a three-year strategic plan consistent with the National Policing Plan. In practice, Chief Constables are also expected to respond to policies and circulars set by the central government (the Home Office and Her Majesty's Inspectorate of Constabulary), which can create interesting dynamics between local and national policy priorities.

CHAPTER 7



More than a rubber stamp Parliamentary oversight

Oversight in democratic systems is rooted in the obligation of ministers to directly account to Parliaments in an open and transparent manner. Legislators can exert pressure on the executive to make police accountable and transparent and to ensure that they adhere to internationally accepted norms and standards. The presence of a strong political executive is a problem in South Asian democracies. However, Members of Parliament themselves must take the initiative to assess the instruments and strategies at their disposal, to educate themselves in how best to use them, and to use the parliamentary framework to allow good governance and democracy to flourish.

As elected representatives, legislators are obliged to ensure that the executive performs its functions according to the collective will of the people. Oversight in democratic systems is rooted in the obligation of ministers to directly account to parliaments in an open and transparent manner. Legislators can exert pressure on the executive to make police accountable and transparent and to ensure that police organisations adhere to internationally accepted standards.

Around the Commonwealth there is a trend toward big-party or coalition politics, and the space for genuine political pluralism seems to be on the decline. This is reflected in the South Asian experience, where, in most cases, it is the will of the dominating executive that determines policies of the state, despite strong resistance by the opposition.

Powerful executive in South Asia: Laws and practice

Both the Constitution of Maldives and the Sri Lankan Constitution makes the executive so strong that it renders the parliament ineffective. The 1978 Sri Lankan Constitution shifted the seat of executive power away from a cabinet to an executive President, elected independently of the cabinet. This has meant that parliamentary powers of oversight have been weakened. Elsewhere in South Asia, Pakistan continues to be governed by a military general with vast powers, who was brought to power by a military coup that toppled an elected government. Although there was a general election in 2002 and a parliament is in place, the President is considered all-powerful. In countries with elected parliaments – like India – the Prime Minister, is the head of the executive and a member of the parliament and is extremely powerful. Even prior to the current interim government in – Bangladesh, a Member of Parliament had observed that “Although it was expected that with the introduction of the Parliamentary form of Government [in the year 1991], the role of the individual legislators and the committees would be enhanced significantly but in reality the expectations did not materialise and we ended up with a Presidential form of Government in the façade of a Parliamentary Government, ‘Parliamentary Autocracy’ in the garb of ‘Parliamentary Democracy’.”¹¹²

When watchdogs become suspects...

Strong allegations of corruption and other criminal behaviour against many Members of Parliament in the region cast light on watchdogs that are suspects themselves. It is very difficult to gauge how many Members of Parliament have criminal cases registered against them because there is very little data or information available. In India, however, the right to information movement has given the community access to this information and in 2002, the Supreme Court of India directed the Election Commission to require candidates’ criminal records to be included in their nomination papers.¹¹³ Of the 543 Members of Parliament elected to the 14th Lok Sabha (the lower house of the Parliament) 129 plus L.K. Advani¹¹⁴ (23.75%) have a criminal background or record. Seven of these are women.¹¹⁵

Members of Parliament can and do hold the executive to account in many ways, both individually and collectively. The challenge for them is to carry out their representative, legislative and oversight duties to further good governance values of accountability, transparency and participation, particularly in relation to policing.¹¹⁶ Members themselves must take the initiative to assess the instruments and strategies at their disposal, to educate themselves in how best to use them, and to use the parliamentary framework to allow good governance and democracy to flourish. The role of the parliamentary opposition is particularly important. Recent trends in South Asia where opposition boycotts in India and Bangladesh have led to laws being passed without debate have allowed the executive to function with minimal scrutiny. This chapter sets out some of the ways that parliaments can exercise oversight over policing.

Raise and debate policing issues

Individual members can hold the executive to account for the kind of policing it provides through questions and motions for adjournments and discussions. In India, this opportunity to ask questions has been used to hold the police accountable through the executive. In 2004, questions ranged from what the executive was doing to implement the recommendations of the National Police Commission, to how the police personnel in Delhi were transferred and appointed and whether this process involved any corruption.¹¹⁷ More questions related to what action had been taken against Delhi police officers who had been caught taking bribes on camera by the media and what steps were taken to ensure “honest and smooth functioning by the police”.¹¹⁸ Another was whether the recommendations given by the various commissions on police reform had been implemented and, if not, the reasons for not implementing the recommendations.¹¹⁹

Members of Parliament can also raise motions demanding the adjournment of the business of the House to discuss a matter of urgent public importance.¹²⁰ Additionally, they can call the attention of a Minister to any matter of urgent public importance¹²¹, and ask for discussion on a matter of public importance that has been the subject of a recent question and the answer, which needs clarification on a matter of fact.¹²² Members can also move a resolution, which is another procedural device to raise discussion in parliament on a matter of general public interest.

Don't wait for the government to legislate: Private Member's Bills

Another strategy that can be used by parliamentarians as an oversight tool are Private Members Bills. If the government fails to introduce bills establishing accountability mechanisms such as Human Rights Commissions or Ombudsman, a member of parliament may introduce such a bill for debate. Such bills may also be introduced to propose amendments to the existing police acts and other emergency and national security laws. Different parliaments have established different procedures for the introduction and debate over such bills.

Parliaments in the region have failed to make a widespread use of these procedures to hold the executive to account. To a large extent, the presence of a strong executive is at fault. The Parliament in Maldives can hardly be held at fault when constitutionally it has an extremely weak structure. In other countries, the executive has found ways to overcome the procedures meant for democratic debates. In Bangladesh, Members of Parliament allege that the Government thwarts even the mere introduction of the Private Member's Bills by voting against the introduction. Those that are introduced are sent to the Parliamentary Committees, where they lay untouched and gather dust. According to one Bangladeshi Parliamentarian, a bill proposing an amendment to the People's Representation Order of 1972, which would bar a public servant from participating in any national elections within three years from the date of their leaving their job was not allowed to be introduced in the House. The amendment would have helped ensure the neutrality of the administrative machinery. Bills proposing amendments to the Special Powers Act of 1974, Administrative Tribunal Act and the Code of Criminal Procedure have all met the same fate; their introduction was prevented or, if they were introduced, they lay in cold storage for years.¹²³

Scrutinise new legislation

One of the most important functions of parliament is to debate proposed laws. In recent history, many parliaments across the Commonwealth have passed laws that grant wider discretionary powers to the police while curtailing the civil and political liberties of the citizens. At times, this has been despite the resistance of the opposition and on other occasions with their consent in the name of security of the nation. In South Asia, these laws are introduced as special or emergency laws and grant immunity and indemnity from civil and criminal action to law enforcement agencies, rather than requiring an increase in accountability

measurable with the increase in police powers. Even where the executive uses its strength in the parliament to defeat democratic debates and pass draconian laws, parliamentarians can still ensure that their concerns are reflected in the debates over such laws.

Despite concerns raised by opposition groups, in 2003 the Bangladesh Parliament passed a law that retrospectively indemnified law enforcement agencies – including the police – for all actions taken between 16 October 2002 and 9 January 2003 in aid of civil administration. During this period in which the executive had ordered a joint operation by the police and the army to tackle rising crime, over 40 deaths were attributed to security forces, and many people reported torture. A Member of Parliament in Bangladesh states that laws being passed in the country are not “legislation by the legislators in the legislature” but “legislation by the executive through the legislature”. He argues that the Parliament and Parliamentary Committees are used as mere rubber stamps to give validity to the policies, decisions and actions of the Government formulated through a piece of legislation.¹²⁴

Opposition in India resisted the passage of the draconian anti-terror law

In India, anti-terror laws were introduced as an ordinance by the President, on the advice of the Government in October 2001, despite criticism from civil society and oversight agencies including the National Human Rights Commission. The Indian Constitution mandates that an ordinance must be ratified by the Parliament within six months of its coming into force or it lapses. It was introduced as the Prevention of Terrorism Bill and was passed by the Lower House, despite vocal protest by the opposition. In the Upper House, where the opposition was in majority, the Bill was rejected. The Government, in an attempt to thwart the parliamentary mandate, decided to use another provision of the Constitution to ensure the passage of the Bill. A historic joint session of the Parliament was called and the Bill was passed by a majority of 425 members voting in favour of the Bill and 296 against it.

Although the Government achieved its objective, the move to thrust this law on the nation was widely criticised. The federal opposition could not stall the passage of the law but it did make its point and ensured that in the states where it held power, the Act was not implemented. The subsequent misuse of the law gave the opposition moral courage, and paved the way for their win in the next parliamentary elections, after which they repealed the Act.

Promote informed public debates around policing

Parliaments should be a place for robust and informed debate on policing and community security issues. Parliamentarians should pressure the government to ensure that law making is a transparent and participatory process. Civil society and the media have key roles to play in informing and disseminating these debates. The media has a crucial role to play publicising debates and encouraging community discussion that puts pressure on government. Community consultation is key on security and justice sector legislation. Enough time must be given to allow public submissions on proposed laws, which must be considered and debated over by the relevant parliamentary committee.

Scrutinise and influence police budgets

Parliament has a police oversight role when it debates and passes police budgets. Police organisations submit a proposed budget for parliamentary scrutiny and vote, and parliament then monitors implementation. In many countries, an Auditor-General presents the audit of

police expenditure to Parliament, and it is then examined by a Public Accounts Committee of Parliament, a specialist finance committee, which is separate from any committees which may exist to oversee policing. The work of overseeing audits only has practical value if the Government then implements the Committee's recommendations. Yet this often does not happen, particularly when the executive is dominant and parliament has little room to maneuver. Meaningful engagement with the budget process offers elected representatives a critical opportunity to shape policy and priorities, and to ensure that resources are appropriately directed. Parliamentarians can be lobbied, and they themselves can call for, say, allocation of more resources to one particular aspect of police work (such as training), or to a part of the country that has been under-policed. They can use the opportunity of budget debates in parliament to make statements about policing and the reform needed.

Deal with public complaints about the police

Often, Members of Parliament will be asked informally by their constituents to assist when there are problems with the police. Members need to handle these situations carefully to avoid political interference in the due process of the legal system, but they can also play a positive role in unblocking problems or mediating disputes.

Parliamentary Committee System

All the countries in the region have parliamentary committee systems in one form or another, performing a wide range of functions such as reviewing legislative proposals, examining budgets, and assessing government performance. Comprising members from treasury and the opposition, these committees provide a forum of interaction where ideally the interests of members could take precedence over partisan interests. In many Commonwealth countries these committees have matured into quasi-autonomous "watchdog" bodies.

Most committees are established by standing orders of parliament or by legislation. Bangladesh is the only country in the region where the Constitution provides for setting up parliamentary committees with very wide powers. The Standing Committees on Ministries in Bangladesh are empowered to review the enforcement of laws and the activities of the ministries or inquire into any activity or irregularity or serious complaints. Thus Standing Committees in *Jatiyo Shangshad* (Parliament) enjoy authority and can exercise powers of a kind not to be found in other parliamentary systems in the region. In Bangladesh, a parliamentary committee also has power to summon any records, documents and persons that it may require for investigation, as well as to administer oath to a witness before it.

The Indian Standing Committees on Ministries, known as the Department-Related Parliamentary Standing Committees, do not have such wide powers. These Committees, including the Parliamentary Committee on Home Affairs, are only empowered to consider demand for grants, examine legislative bills referred to them, consider annual reports of the Department or Ministry, and to consider national policy documents presented to the House and referred to the Committee. The Rules of Procedure clearly specify that these Committees do not consider matters of day-to-day administration of the concerned departments or Ministries. However, in considering demand for grants, the Department-Related Parliamentary Standing Committee on Home Affairs has on many occasions recommended actions to the executive to ensure police accountability. For instance, the Committee noted that the recommendations suggested by the National Police Commission must be implemented and the Government was urged to "submit a status paper to it on the recommendations which have found acceptance and which have not and whether the ones which have been accepted could be implemented in a time bound manner".¹²⁵ In its next report, the Committee observed that it was "not satisfied with the replies furnished by Government which are too general and vague" and suggested further steps to be taken by the Government.¹²⁶

Committees in the region have not found it easy to perform their functions and they face many constraints ranging from party politics to the quality of membership. In India, Ministers

cannot be nominated in any capacity to Committees on petition, assurances and public accounts and to the Standing Committee on Ministries to Ensure Government Accountability. In Bangladesh and Pakistan, Ministers are barred only from being the Chair of the Standing Committee on Ministries, but they can be nominated as members to these committees. This clearly reduces the oversight capabilities of the Bangladesh and Pakistan Committees.

Sri Lanka committee on human rights issues and its working group

A Permanent Inter-Ministerial Standing Committee on Human Rights Issues was established in Sri Lanka in 2000 “with the mandate to consider issues and incidents relating to human rights violations and to take policy decisions in this regard.”¹²⁷ In order to ensure efficacy in fulfilling its mandate, the Standing Committee established the Inter-Ministerial Working Group on Human Rights. With a view to minimise disappearances and torture in detention, the Working Group decided to “establish a Central Police Registry, containing computerised current information relating to all arrests and detention of suspects under the provisions of the Emergency Regulations”¹²⁸. Consequently, a circular dated 20 January 2001 distributed among all Officers in Charge of Police Divisions through to the Head of the Police clearly specified that the relevant information should reach the Central Registry within six hours from the time of each arrest. In addition, a 24-hour telephone hotline is available to the public to make necessary inquiries from the authorities relating to alleged arrest and detention of suspects. Despite these commendable actions, the fact remains that most arrests and detentions are not recorded in the register.

With the election of the seventh Parliament in Bangladesh (1996-2001), political parties represented in the Parliament were given the representation in Committees proportionate to the number of seats held. This led to a delay in Committees being set up, as most could not be constituted for more than a year after first sitting of Parliament, due to a dispute between the ruling party and the main opposition party around the issue of proportionate representation. The Committees of the eighth Parliament (2001-2006) also got off to a delayed start because of the opposition boycott.¹²⁹

In countries like Bangladesh, where the remuneration and allowances of the Members of Parliament are meagre, most Members also work another job, which results in poor attendance both in the sittings of Parliament and the Committees. Consequently, many of the Committees do not have the required monthly sitting.¹³⁰ Even the time that Parliamentarians do spend in Committees is not hugely effective because of a lack of research staff, subject specialists and legal assistance. Usually the Committees are restricted to rely on inputs received from the executive, which reduces the oversight potential of the Committee. In Pakistan where “the political process has been marked by frequent interruptions in the past, the bureaucracy has developed a tendency to not attach due seriousness to the invitations to the committee meetings”.¹³¹ In Bangladesh, Government functionaries who are required to provide data and information to the committees are usually unwilling to do so promptly, which slows down the functioning of the Committees. Rule 203 of the Rules of Procedure of Parliament, which empowers the Committees in Bangladesh “to send for persons, papers and records” also provides that “Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.” This gives ample scope to the executive to deny relevant documents to the Parliament.¹³² When it is working well, the parliamentary committee system can be a strong accountability mechanism; legislators are in the best position to push for institutional reform to achieve effective oversight.

CHAPTER 8



No one is above the law: Judicial oversight

Independent courts are the best mechanism to ensure that state agencies, including the police adhere to laws and do not violate rights of individuals. They are also effective structures to ensure that law-abiding police officials are not punished by unscrupulous politicians for failing to tow the political party lines. Despite all the important decisions laid down by certain courts in the region, the judiciary as a redress mechanism has remained beyond the reach of the masses. Apart from the lack of independence and other structural limitations that ail the judiciary in South Asia, this is largely due to expensive lawyers, faulty legal aid mechanisms (where they exist), protracted trials and corruption.

The judiciary ensures that the laws made by parliament and acts of the executive comply with constitutional and international human rights standards. It also protects citizens from the excesses of the state and its agents by bringing to book perpetrators of human rights violations and breaches of law, and by ensuring that victims obtain sufficient redress. All countries in the region have a constitutionally established judicial system. However, the independence of the judiciary and its powers to grant redress against the police vary from one country to another. Independence from the executive is a prerequisite to a thriving judiciary that strives to check executive excesses and protect individual rights.

While the judiciary in India is regarded as fairly independent, this is not the case in other countries in the region. In Maldives “in addition to his authority to review high court decisions, the president influenced the judiciary through his power to appoint and dismiss judges.”¹³³ In November 2005, bowing to national and international pressure, the President announced the creation of a 10-member Judicial Services Commission (JSC). Headed by the Chief Justice (who is himself a presidential appointee), and comprising as many as seven Government officials as its members, the JSC is empowered to “appoint, dismiss, and examine the conduct of all judges, and recommend candidates for judgeships to the president.”¹³⁴ The JSC has not been a particularly visible or active oversight mechanisms. It took eight months to establish its rules of procedure and has not made any deliberations or recommendations public.¹³⁵

In Bangladesh there was no separation between the subordinate judiciary and the executive, despite directions from the Supreme Court to ensure the separation, until January 2007. In Pakistan, the Constitution provides for an independent judiciary. However the executive has eroded this independence over time. In January 2000, the President ordered the country’s highest-ranking judges to swear allegiance to his regime. Only 89 of Pakistan’s 102 Superior Court judges took the oath, and the Supreme Court Chief Justice and several other judges who refused to take the oath lost their jobs.¹³⁶ In 2007, the President of Pakistan unceremoniously and illegally declared the Chief Justice of the Supreme Court non-functional on allegations of corruption and allegedly held him under effective house arrest. Under the Constitution, the President could refer an issue regarding a judge to the Supreme Judicial Council but does not have the power to stop the judge discharging his or her office.¹³⁷ The Chief Justice was reinstated in July 2007 after the Supreme Court showed great courage in rejecting the President’s reference.

In Sri Lanka, the Supreme Court has recently been accused of being extremely politicised. Lawyers and human rights activists are complaining that fundamental rights cases are increasingly refused hearings and the judgments are consistently less favourable towards complainants.¹³⁸ In early 2006, two senior judges of the Supreme Court (constituting the Judicial Service Commission along with the Chief Justice as the Chairman) resigned their position citing grounds of conscience. The widely held perception was that the resignations were due to differences with the Chief Justice whose actions in dismissing and transferring judges of the subordinate courts had been challenged as being arbitrary and motivated by political factors. The appointments to the two vacancies created were made directly by the President ignoring the constitutional mandate that they receive the approval of the Constitutional Council.¹³⁹

Protecting law-abiding police officials

Independent courts are the best mechanism to ensure that state agencies, including the police, adhere to laws and do not violate rights of individuals. They are also effective structures to ensure that law-abiding police officials are not punished by unscrupulous politicians for failing to tow party lines. In a case where the court was called upon to determine the extent and scope of superintendence that the central Government could legally exercise over its premier investigative agency, the Indian Supreme Court held that “The general superintendence over the functioning of the Department... would not include within it the control of the initiation and the actual process of investigation”.¹⁴⁰ In order to protect the investigative police agency from illegitimate control, the Supreme Court also instructed the Government to place the

superintendence of the agency in the hands of an independent statutory body called the Central Vigilance Commission.

Judiciary protects the rights of the police

In India, the government set up the Central Administrative Tribunal (CAT) in 1985 as a fast-track court to deal with all cases relating to personnel and service matters for government employees aggrieved by government decisions, including police officers. Many state governments have established state administrative tribunals to deal with matters relating to state government employees. Earlier, these cases were dealt by the ordinary courts, which were unable to cope with the high number of cases. The Tribunals often deal with the problem of governments issuing arbitrary transfer orders to police officers, holding them accountable for what may amount to political interference in the administration of the police forces.

A senior police officer in Gujarat approached the CAT claiming that he was denied promotion because he refused to bow to intense political pressure during Gujarat riots in 2002. The CAT ruled in his favour and although he had retired by that time, it was a huge moral victory for the officer.¹⁴¹

Punishing perpetrators

Apart from Maldives, the courts in the region have held the police to account in a variety of ways. At a minimum, they have punished misbehaving police officers where there has been proof of misconduct. In Bangladesh, in September 2004, two former policemen were hanged to death after a judicial decision of 1997 found them guilty of kidnapping, raping and then strangulating an eighteen-year-old girl. However, there is also no dearth of cases where the courts have let off accused officers who were convicted by lower courts despite the fact that they were believed to be guilty. Usually, it is because the higher courts were of the opinion that the evidence presented by the police or prosecution was not sufficient to hold the accused guilty. In many cases, where police deliberately tampered with evidence to protect their colleagues, courts have proved ineffective in punishing the perpetrators. In a small number of these cases, the courts have ordered departmental inquiries against the concerned inquiry officers.

In 2003, the Colombo High Court sentenced five people, including two police officers, for their involvement in a massacre of minority Tamil youths at a detention centre in Sri Lanka.¹⁴² More than 25 young Tamils were attacked and killed by a Sinhalese mob, in the presence of guards. Evidence later showed that some policemen turned a blind eye to the atrocities being committed by the mob, while others actively assisted. The Court observed: "If not for the complicity of police officers, this would have been avoided.... When the victims went running to policemen seeking protection, they were fired at by the police".¹⁴³ However in May 2005, upon appeal, the Supreme Court reversed the order of the High Court. Acquitting all the accused, the Court held that the High Court had wrongly appreciated evidence in holding these people guilty. Many human rights activists unhappy with the judgment argue that the investigators and prosecutors had deliberately and systematically destroyed evidence of the massacre of the minority community, and insist that the Supreme Court should have taken these factors into account when considering evidence.

Awarding monetary compensation

In many cases, courts have awarded monetary compensation to victims of police misconduct, not only in civil suits filed for this purpose, but also in criminal cases and fundamental right petitions. The Indian Supreme Court has held in a number of cases that the state is obliged to give compensation to victims or their heirs for violation of fundamental rights by its

agents, and that the state may recover the same from the guilty officers. This has meant that the victims do not need to prove the identity of the accused police official, and proof of violation of their fundamental rights entitles them to compensation.¹⁴⁴

In April 2003, the Supreme Court of Sri Lanka awarded a record payout to Gerald Perera for the suffering caused by torture inflicted by police in June 2002, which left him in a coma for over two weeks, and caused serious injuries to his kidneys and other internal organs. The Court awarded LKR 800,000 and full medical costs.¹⁴⁵ Unfortunately, in Sri Lanka, victims only have one month after a human rights violation to approach the court for redress, after which the case is time barred under the Constitution. Although the Court had in the past relaxed these limitations, the fact remains that the victims cannot approach the Court as a matter of course in such cases.

Public good matters: Public interest litigation in South Asia

Public interest litigation is being used more and more in the region. It has been used by human rights organisations to approach the courts to interpret laws around policing and to define the scope of the powers that the police have. In performing their task of interpreting the legal provisions, the courts in the region – especially India and Bangladesh – have played in an important role by checking executive excesses and providing policy guidance to the police in performing their legal duties.

The Bangladesh Supreme Court has laid down detailed guidelines for effecting arrest to avoid police abuse of power. It has directed that the arresting officials should disclose their identity, that reasons for the arrest should be recorded in a particular register, that persons arrested should be given the reasons for arrest within three hours of arrest, that relatives or friends of the arrested person should be informed about the arrest, that a detainee should be allowed to consult a lawyer and that any death in police custody should be reported to a Magistrate for inquiry.¹⁴⁶

In India, the higher judiciary has been active in passing guidelines to ensure police accountability and the Indian Supreme Court has also directed the police to follow their guidelines when arresting people.¹⁴⁷ In fact, some of these guidelines have recently been incorporated into the law through an amendment to the Criminal Procedure Code.¹⁴⁸ In another case, the Supreme Court directed the police to refrain from handcuffing a person without judicial permission, so that suspects are not humiliated.¹⁴⁹ Yet another direction mandates that only female police personnel may arrest women suspects, save in exceptional cases.¹⁵⁰ The Indian Supreme Court has also laid down guidelines for the police on how to treat victims of sexual abuse and what support should be provided to such victims¹⁵¹. In a recent case, the Supreme Court directed the central and all state governments to reform the police and has laid down seven detailed strategies and mechanisms to implement the reform agenda.¹⁵²

Obstacles and challenges

Despite all the important decisions laid down by certain courts in the region, the judiciary as a redress mechanism has remained beyond the reach of the masses. Apart from the lack of independence, and other structural limitations that ail the judiciary in South Asia, this is largely due to expensive lawyers, faulty legal aid mechanisms (where they exist), protracted trials and corruption. A 2002 public perceptions survey conducted by Transparency International indicated that the judiciary closely followed the police as the most corrupt public service.¹⁵³

A major obstacle faced by the judiciary in holding the police to account are special and emergency laws in the region that grant law enforcement agencies immunity from prosecution, limiting the oversight powers of the courts. In Bangladesh, the Special Powers Act provides

for prolonged arrest and detention, and provides immunity to law enforcers from prosecution or other legal proceedings for anything done in good faith under the Act¹⁵⁴. Anti-terror laws in India prevent any civil or criminal cases against the police for acts done in good faith under those laws. In India, Bangladesh, and Pakistan public servants (including police officials) enjoy considerable protection from prosecution, even under ordinary laws. Section 197 of the Criminal Procedure Code of India provides that no court will take cognisance of “any offence alleged to have been committed by him [any public servant includes a police official] while acting or purporting to act in the discharge of his official duty” without prior permission from the employing government. However, some courts in the region have demonstrated courage and independence in holding the executive and its agents to account.

Waiting 20 years for justice¹⁵⁵

In many cases, because of being overworked, courts in South Asia take such an extremely long time to decide the cases that they give meaning to the maxim that justice delayed is justice denied.

In India in 1987, the members of the Provincial Armed Constabulary (PAC) in the state of Uttar Pradesh picked up hundreds of Muslim men during a combing operation after communal riots, and killed over 40 of them by shooting at point blank range. The Government ordered an inquiry by the Crime Branch of the Central Investigation Department after much public pressure and outcry. The Department submitted its report in 1994, seven years after the incident. The report indicted 66 police personnel, but was never made public. The Uttar Pradesh Government filed cases against 19 policemen in 1996 without giving reasons for failing to file cases against the other 47 personnel referred to. Out of the 19 policemen sent for trial, not one was arrested or produced before the Court, even after warrants were issued by the Magistrate. This despite the fact that they were all serving members of the Constabulary, whose posting and home addresses were known. In 1999, the Magistrate declared the accused policeman as absconders and began proceedings for confiscation of their properties.¹⁵⁶ After much public pressure and media attention, the justice process began to move, and 16 of the 19 accused officers surrendered to the courts in May 2000. All were granted bail by the trial court on the grounds that there was no direct evidence against them, and that because they were members of the police, there was no risk of their absconding. In September 2000, the Supreme Court transferred the case from Uttar Pradesh to Delhi, on a petition by the victims alleging that the “accused were influential personnel of the PAC and had been causing delays even in the framing of the charges for the past five years.”¹⁵⁷ It took the trial court in Delhi six years (until May 2006) to frame charges against all the accused because the state of Uttar Pradesh failed to appoint a special prosecutor to prosecute the case until November 2004. Twenty years after the massacre victims have to contend with the fact that only 3 of the 164 witnesses cited by the prosecution have been examined¹⁵⁸.

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The best accountability systems combine independent external accountability mechanisms with a strong internal system that is expected to address internal breaches of discipline.”

CHAPTER 9



Lifting your game: Internal accountability

The importance of an internal system in holding the police staff responsible has long been recognised because of its immediacy and better-informed avenues of investigation. Across the Commonwealth, two mechanisms are central to discussions on internal accountability mechanisms. The first is the disciplinary system – both the formal processes for sanctioning misconduct and the informal cultural mechanisms that inform the interactions between officers influencing their actions as well as interaction with the community. The second is the comparatively new technique of performance management, which aims to assess and improve police efficiency and effectiveness through target-setting and statistical analysis. While the first mechanism is well established (though not as efficient as it is in many Commonwealth jurisdictions) in South Asia, the second has yet to take roots.

All three pillars of governance – the executive, the parliament and the judiciary – have a specific and defined role to play in ensuring good policing. But it is equally the responsibility of the police themselves to ensure that internal systems guarantee discipline, performance and all round good policing. The importance of an internal system in holding police staff responsible has long been recognised because of its immediacy and better-informed avenues of investigation. In the police, like any other hierarchical organisation, senior officers play an important role in managing junior staff, ensuring efficient discharge of duties, and taking disciplinary action for failure to meet targets. Being empowered to use force, police officials are also liable for disciplinary action for any abuse of power in performing their duties.

Across the Commonwealth, there are two mechanisms that are central to discussions on internal accountability mechanisms for the police. The first is the disciplinary system – both the formal processes for sanctioning misconduct and the informal cultural mechanisms that inform the interactions between officers influencing their actions as well as interaction with the community. The second is the comparatively new technique of performance management, which aims to assess and improve police efficiency and effectiveness through target-setting and statistical analysis. While the first mechanism is well established in South Asia (though not as efficient as it is in many Commonwealth jurisdictions), the second has yet to take root.¹⁵⁹

Disciplinary system

All the countries in the region have a formal internal disciplinary system to deal with misconduct of individual police officials. This process does not replace the criminal process. A police official guilty of a criminal offence will be prosecuted under the law, and at the same time will also be subject to the disciplinary process. Disciplinary systems are well prescribed in police acts, service rules, and departmental rules and regulations, and deal with individual officers who engage in misconduct, including failure to abide by duty, lack of discipline or abuse of power.

The internal disciplinary processes across the region share similar approaches. First, a complaint is submitted, then an inquiry or investigation conducted, verdict reached, punishment prescribed and then an appeal process is made available. The process can be initiated by a complaint from a colleague or a member of the public. In some cases, where there is public outrage over the conduct of the police, the government may direct the police department to inquire into the specific incident and initiate disciplinary inquiry against any alleged offenders. Additionally, the courts, in trying fundamental rights violation cases or other cases where the police may have tempered with evidence, can direct the department to take disciplinary action against the perpetrators.

The disciplinary inquiry

Different rules govern inquiries with respect to officers of different ranks but a common rule throughout the region is that only an officer or authority senior in rank to the alleged perpetrator can conduct a disciplinary inquiry. The form that the inquiry takes depends on the nature of allegations against the concerned police officers. Rules governing the conduct of the police officials clearly spell out the conducts that would invite major or minor penalties, and the form of disciplinary inquiry required to award these punishments. Where the offence is not serious – such as not reporting on duty on time or not wearing a proper uniform – a fact-finding inquiry conducted by a senior officer is sufficient. After giving the concerned officer a reasonable opportunity to show why a particular punishment should not be levied, a minor punishment such as censure, withholding of promotion or increment without future effect can be given.

If the conduct complained of invites major penalty such as dismissal, compulsory retirement or reduction in rank, the disciplinary inquiry follows a process laid down in the different rules and regulations of the concerned police department. Usually, it begins with what is known as a preliminary inquiry or a fact-finding investigation. Some countries create special units

within the police organisation to investigate cases of misconduct. In India, vigilance departments have been created at the state level in most of the states to investigate mainly cases of police corruption. In many states, these units are also entrusted with the task of investigating other complaints against the police personnel. In Sri Lanka, cases of torture that were earlier investigated by the Criminal Investigation Department (CID) are now handled by the Special Investigations Unit, which also investigates other complaints against the police such as fraud. Again, in order to facilitate institution of criminal proceedings against perpetrators, the Disappearances Investigation Unit (DIU) was established in 2002 as a special unit of the police. Success of these specialised investigation units depends upon the credibility of the personnel who staff them, availability of resources (both human and financial) and the support they receive from the police hierarchy. In Sri Lanka, for example, these units enjoy no credibility whatsoever because of their failure to deliver results owing mainly to political interference in appointments as well as in actual investigations. Depending on the outcome of an investigation, a disciplinary inquiry comes into full swing and a criminal case may be instituted.

A formal disciplinary inquiry begins with concerned officers being presented with charges against them. They are given reasonable opportunity to submit a reply and at the final inquiry, they are allowed to cross-examine witnesses against them, call their own witnesses and submit evidence. If they are found guilty following the departmental inquiry, they are awarded appropriate punishment by disciplinary or the appointing authority. The disciplinary (or in some cases, the appointing) authority is the agency competent in law to award punishment to a particular police official, and varies according to the rank of the official. All officers in the region (except for Maldives from where no information is available) are entitled to at least one appeal against the order passed by the disciplinary authority.

Closed processes

Created in the colonial era, internal disciplinary systems were a tool to keep the police officials in line with government policy. Consequently, the systems that were established are not transparent – even the complainant has very little space within to tell their story. In Sri Lanka, however, the rules require involvement of a member of the public in all internal inquiries against the police upon public complaints.¹⁶⁰ All complaints against the police by members of the public in Sri Lanka are investigated by a Board of Inquiry that is made up of two police officers and a member of the public. Although the police officers may vary depending on the rank of the accused police officer, the third member is always a member of the public.¹⁶¹ At first glance, this is an excellent way to make the internal system transparent and fair. However, this is not so. The rules provide that the member of the public is chosen from a panel prepared by the senior police officers and the presence of this member means that “the complainant is not allowed to be accompanied or assisted by any others at the inquiry”.¹⁶²

Complainants often have no role in the discipline process, except as witness, although the rules may provide that they are informed of the result of an inquiry. Complainants do not have the right to cross-examine the accused or file an appeal against a decision. Accused officials, on the other hand, can do all these things. Additionally, the fact that there is no witness protection programme in place for such inquiries means that complainants and other witnesses can find themselves in grave danger when reporting police misconduct.

Lack of will to implement the system undermines

The internal disciplinary mechanism is largely viewed as biased in favour of the police, and the public does not trust it. Both its opacity and lack of space for victims, as well as the perception of a police brotherhood contribute to this lack of public faith. Officers in a police station may not investigate the case adequately, close rank against external investigators, harass the complainant to withdraw the complaint or threaten witnesses. In many cases, the inquiry officer may also tend to favour the accused police officer rather than the complainant.

Factors that immensely undermine the internal disciplinary system are illegitimate political interference and a lack of senior police management will to properly implement systems. Government and senior management may refuse to punish a perpetrator who has produced what they consider to be a result, no matter how illegal the means or unjust the outcome. In the state of Punjab in India, thousands of Sikhs disappeared in the mid-1980s, at the height of counter-insurgency operations in the state. Many of these were widely believed to be deliberately killed by the police. But the Government has consistently refused to either prosecute or take departmental action against the officer involved in the killing. This lack of political will manifests not only directly by shielding the perpetrators, but also indirectly by providing limited funds and resources to investigate disciplinary breaches.

Strengthening disciplinary systems – transparency crucial

Tackling both the problems of transparency and the lack of will to implement processes that strengthen the disciplinary system is not easy and the solution is not to strip police of all their disciplinary powers and vest it in an external agency. This sends the wrong message to the police; that the public and the government expect the police to misbehave. This will result in further closing of ranks against all outsiders and the external investigating agency will get no support from the police. Rather, the best accountability systems combine independent external accountability mechanisms with a strong internal system that is expected to address internal breaches of discipline.

While improving and demonstrating senior management commitment to discipline can be hard, tackling the opacity of police disciplinary systems is relatively straightforward. It can start with articulation of the behavioural standards expected of police personnel through, for example, simplified codes of conduct in addition to the existing laws and regulations. By providing police personnel with a clear statement of the behaviour expected of them, and publishing them so they are available to the public, senior police managers reiterate their own commitment to good discipline and help translate sometimes complex legislation into more meaningful information.

Transparency can also be extended to the disciplinary process itself, such as publishing information about the way police disciplinary procedures work. Figures for the number of complaints received and upheld each year can also be released. Finally, police organisations can make the process of registering complaints easier, by providing, and funding adequately, multiple avenues – including by telephone and the internet. Showing that the disciplinary system is both responsive to the public and capable of taking action will be important factors in dispelling public mistrust of the system.

A transparent disciplinary system needs to be supported by positive and open police culture. Police culture is strongly influenced by senior police managers as well as external factors including community culture, social, religious and ethnic divides, education levels and the relationship between police and politicians. It is critical that recruitment processes ensure that the police are representative of all parts of the community, that new recruits are provided with effective training on issues of diversity and gender, and that police managers set good behaviour standards.

Performance management systems

A relatively recent trend in policing, performance management systems seek to transform police forces into more modern and effective organisations by focusing on their performance. South Asia has not developed these systems in the way that many countries with democratic policing traditions have.

Supervision and inspection to monitor performance

Police organisations in the region have retained age-old methods of supervision and inspection to monitor performance. In all countries, designated superior officers carry out the supervision of the work of juniors through periodic inspections of diaries and records that are required to be regularly maintained.

Extensive documentation to ensure effective oversight

In order to ensure effective supervision of the working of police officials at the police station level – the basic unit where crimes are reported and investigated – most of the rules in the region provide that every matter reported at the police station must be recorded in a register (referred to as the station or general diary) kept at every police station which has to be maintained round the clock. Senior officers are expected to regularly inspect these registers and records. For example, in India, a copy of the general diary for the past 24 hours is submitted to a senior officer (Sub-Divisional Police Officer) on the following day, who is obliged to carefully scrutinise the diary and issue suitable instructions whenever necessary. In addition, there are case diaries that are maintained by investigating officers in respect of their cases. Apart from the diaries, police officials are mandated to maintain a system of records pertaining to crime, criminals, convictions, police station property, property attached during investigation and the detention area, all of which are liable to spot checks.

Object of inspections

In Bangladesh, the regulations specify that the main aim of an inspection is to ensure that there is effective police functioning and that inspecting officers should pay particular attention to:

- ▶ **The conduct of investigations;**
- ▶ **The collection of information about criminals;**
- ▶ **The local progress of crime;**
- ▶ **The application of preventive measures;**
- ▶ **The employment of the village police; and**
- ▶ **Co-operation with panchayats, union boards and the public.¹⁶³**

The rules prescribe supervision of the investigation into important or serious cases through the examination of crime registers, scrutiny of case diaries and even personal examination of witnesses. This is to ensure that the investigation follows due process, is honest and without undue delay and that the public is not harassed unnecessarily. All these mechanisms are prescribed to ensure that police officials perform their legal duties in the manner prescribed, or else face disciplinary action. However, failure of senior police managers to regularly inspect records, supervise investigations and provide guidance to junior officers means that the system is weakened.

Performance evaluation: modern trends

In developed democracies, apart from regular supervision and inspections, effective systems of monitoring and improving police performance have been established. These jurisdictions look at the police in terms of results that they deliver so as to address the issue of effectiveness, focusing on the contribution that the police make to tackle criminality and make the society a safer place. Crime figures and opinion polls (that look at issues such as public perception of the police or levels of crime) become relevant and are used both internally by the police leaders to improve performance in weak areas and externally as a means of explaining police performance to the public. Both are capable of being strong tools to hold the police to account, the first as a way of highlighting problems inside the organisation (by comparing individuals, or units or provincial organisations, and by identifying trends, say in complaints

against the police), and the second as a way of expressing the results the police achieve in objective terms, which can then act as the basis for discussion about how to improve the way police work.¹⁶⁴

In South Asia, there is no transparent performance management system and, with the exception of India, it is not easy to access comprehensive crime data or other data on public complaints received against the police.¹⁶⁵ Crime data that is generated often remains with the police and there is no way of knowing what use is it put to.

While systems in developed countries like the UK are heavily reliant on technology and might not be feasible in South Asian countries with limited resources, the principles on which they are based – transparency, a relentless focus on key results, and a willingness to reward and punish for good and poor performance respectively – can be transplanted to even resource-poor areas, and are critical for true police accountability. In South Africa, which is a middle-income country, the Performance Chart System was implemented in 2003 and 2004 to gauge and communicate the police organisation's progress and results. The system is able to compare the performance of South Africa's 1200 police stations and 9 provinces. Performance is assessed monthly, on the basis of an index which measures progress in seven areas. These seven areas are crime prevention, crime reaction, crime investigation, crime information, skill development and professional conduct, vehicle management and efficiency. This encourages police managers and members to focus on results and continuously improve their ratings, by establishing a relatively transparent, competitive internal environment.¹⁶⁶ With its 2002 police law, Pakistan put in place some performance management systems. These systems – which are still to be implemented in spirit – included the preparation of annual policing plans that are to approved by statutory bodies and submitting reports on performance and achievement of targets.

Making performance management relevant to individual conduct

Performance management is generally framed in organisational terms but most effective systems are relevant to individual officers as well. Individual career management, using a good individual appraisal system has been effective in rewarding those who perform well, warning those who fail to deliver good results and weeding out those who are unwilling to reform. The appraisal systems in the region need to be modernised to reduce subjectivity and to ensure that these systems can be effectively used to improve performance of individual officers.

In a 1983 article that remains relevant today, a former Indian police officer lamented that an analysis of the annual confidential reports (appraisal reports) shows a "preponderance of personality-oriented traits like 'bearing', 'zeal', 'keenness', 'liveliness', 'loyalty', 'personality', 'patience', 'sobriety', 'resourcefulness', 'tact', [and] 'temperament'."¹⁶⁷ Clearly, the scope of subjectivity creeping in when describing such traits as loyalty and zeal is considerable. Instead, having criteria that are related to the police officers' work, including their ability to handle riots, to prevent and detect crime, knowledge of the law and human rights, training undergone, management skills and public relations would go a long way in ensuring that performance is enhanced.

Traditional officer evaluation involves an appraisal at the end of the year based on the memory or impression of the superior. A more effective approach is the critical incidents method, which requires the officers' performance to be evaluated on the basis of objective data collected in a systematic manner. "A running record of specific, critical incidents indicating the employee's good or poor performance is kept as they are observed throughout the year. It is only the observed performance which is required to be recorded and not the judgement or opinion of the superior about any particular trait."¹⁶⁸ This record can also be easily used for counselling the subordinates about their performance and problems.

It boils down to good management

Notably, both performance management and disciplinary procedures require good management that is committed to improve the efficiency of the police organisation in accordance with the rule of law. Before South Asia can achieve effective and efficient police organisations with strong internal accountability mechanisms, the managerial culture which ill-treats junior officers and does not respect their dignity needs to be addressed. In promoting excellent police performance and deterring police misconduct, police managers need to be transparent about their actions and decisions not only to the public but also to their juniors.

Key management values¹⁶⁹

- ▶ **Clarity** – every police officer knows what the organisation is trying to achieve and the role each officer plays in delivering this.
- ▶ **Transparency** – senior managers' decisions are made openly, after consulting with staff and the community as appropriate and enabling outside scrutiny if necessary.
- ▶ **Visibility** – within operational limits, the activities of police staff are perceptible both to colleagues, superiors and the community.
- ▶ **Responsibility** – every member of the organisation is held personally accountable for his or her actions. This includes fairly judged rewards for good behaviour and results achieved, as well as sanctions for bad behaviour or poor performance.
- ▶ **Empowerment** – responsibility is devolved to the lowest level possible to enable decisions to be taken as close to the front line as practicable.

“

Effectiveness of the civilian complaints authorities, Ombudsman's offices and Human Rights Commissions depends largely on how truly separate from police and executive influence they are and how autonomous and well embedded their status in the country's legal architecture. ”

CHAPTER 10



Watching the watchdog: External civilian oversight mechanisms

The presence of at least one external, independent civilian agency to ensure independent investigations into allegations of police abuse can send the message that the police will be held accountable. Except for Bangladesh, that has no external civilian oversight mechanism, all countries in South Asia have experimented with these systems in one form or another. Irrespective of the way that independent oversight is structured, political will and strong leadership of both the police and the independent bodies is essential for building a truly accountable and responsive policing system.

A key component of true accountability in the police is external civilian oversight. External civilian oversight complements internal, judicial, executive and parliamentary accountability and creates a web of accountability that ensures police misconduct is dealt with. External civilian oversight makes the police more transparent for the community, involves outsiders, builds public trust, allays fears of bias, assures impartiality of investigation, ensures effective complaints handling, reduces abuse of power and misconduct, changes internal police culture and ensures good police performance. Civilian oversight is approached in different ways in different countries. Models range from organisations dedicated solely to the investigation and oversight of complaints against the police to Ombudsman or National Human Rights Institutions with powers to deal with police complaints. In South Asia, three countries have National Human Rights Institutions,¹⁷⁰ three have Ombudsman,¹⁷¹ and three have civilian complaints agencies.¹⁷² While Sri Lanka has all the three oversight bodies, Bangladesh lacks any civilian oversight agency. This chapter looks at a number of different models of civilian oversight and considers their application in South Asia.

Lack of independent skilled staff = Ineffectiveness

In Sri Lanka, the Attorney General's department set up a Missing Persons Unit, headed by a Deputy Solicitor General to investigate cases of disappearances. However, the Unit does not have a separate cadre of investigators and uses the internal police investigators from the Disappearances Investigation Unit. Since 1998, the MPU has managed to secure only twelve convictions and does not inspire much faith in the people of Sri Lanka.¹⁷³

Effectiveness of civilian complaints authorities, Ombudsman's offices and Human Rights Commissions depends largely on how truly independent of police and executive influence they are and how autonomous and well embedded their status is in the country's legal architecture. Their effectiveness also depends upon the width and clarity of their mandate, the scope of their investigative powers, the composition and competence of their leadership and staff and the adequacy and sources of financing. A particularly crucial factor is their ability to compel obedience to their recommendations and the attention and support their reports and findings receive at the hands of the government and police.

Minimum requirements for a successful oversight body

Whether the oversight body is devoted solely to police oversight or not, the factors that determine success are the same:

1. **Independence:** Should be independent of the executive and the police and empowered to report directly to Parliament.
2. **Sufficient powers:** Should have the authority to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings and subpoena documents and compel the presence of witnesses including the police. Should also be able to identify organisational problems in the police and suggest systemic reform.
3. **Adequate resources:** Should have sufficient funds to investigate at least the more serious complaints referred to it. Skilled human resources to investigate and otherwise deal with complaints should also be available.
4. **Power to follow up on recommendations:** Should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief/government in response to its recommendations. It should also be able to draw Parliament's attention to instances where police take no action to reports.

National Human Rights Institutions

National Human Rights Institutions, usually known as Human Rights Commissions, investigate complaints against the police as part of their overall mandate to promote and protect human rights. The minimum requirements for a successful human rights institution have been internationally recognised and summed up in the Paris Principles,¹⁷⁴ which, among other things, lay down that these institutions must be independent and that this independence must be guaranteed by statute or Constitution. The Commonwealth has also developed Best Practice for National Human Rights Institutions that elaborates and develops the ideas contained in the Paris Principles.



Independence and broad mandates – a must

Whether a Human Rights Commission is able to function effectively as an oversight agency depends on its independence from the executive. For this, it is imperative that it has statutory underpinnings, and is not dependent on the will of the executive for its functioning. In Maldives, the Human Rights Commission was initially created by presidential decree and derived its powers to entertain and investigate human rights violations from it. It attained statutory status in 2005. In Sri Lanka and India, the Commissions have been set up as permanent statutory bodies with broad mandates to monitor, entertain and investigate complaints against police. Both the Commissions are empowered to take up cases on their own and also upon a complaint. They have powers to summon evidence and examine witnesses and can make recommendations to the Government to take appropriate actions against erring police officials.

The Sri Lankan Commission is authorised to visit places of detention and in fact the law mandates that “all arrests and detention under the Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA) must be reported to the Commission within 48 hours of arrest.”¹⁷⁵ It has set up a 24-hour hotline to enable the public to bring to the notice of the Commission any violations of fundamental rights.¹⁷⁶ In May 2004, the Commission also announced that it would set up a dedicated Torture Prevention and Monitoring Unit after its Chairperson issued a short policy paper explaining the Commission’s policy on torture.

India’s National Human Rights Commission has built up credibility for itself by taking pro-human rights (even where that statement was anti-government) stance in many cases and has also recommended the government to pay the interim compensation in certain cases.¹⁷⁷ It has also passed guidelines for the police officials on police public relations,¹⁷⁸ on encounter deaths (extrajudicial killings),¹⁷⁹ on powers of arrest¹⁸⁰ and on the use of polygraph (lie detector) tests.¹⁸¹ It has also given guidelines with respect to custodial deaths and rapes, and directed all police organisations to report all such cases to it within twenty-four hours.¹⁸²

Impediments to success

The way that appointments of Commissioners are made directly impacts on the success of the Commission. In Sri Lanka in 2006, Commission members were appointed directly by the President in direction contravention of the Constitution, which provides for a transparent and independent process of appointment to the Commission. Shortly after being reconstituted, the Commission “officially decided to stop further inquiries into disappearance cases unless an order is received from the government to continue with the inquiries as the findings may result in the payments of compensation etc”.¹⁸³ Recently in 2007, the reconstituted Commission in Sri Lanka has reduced the time limit for making complaints of human rights violations to it, to three months from the date of a violation. Since the law does not prescribe any time limit, it is distressing to see the Commission itself acting in a manner prejudicial to its mandate.¹⁸⁴ Once again, this indicates the harms of a faulty appointments process.

In addressing cases of human rights violation, the Commission in India is severely restricted by the statutory bar that disallows it from inquiring into any case if more than one year has elapsed between the time of the incident and the complaint¹⁸⁵ and many genuine grievances go unaddressed because of this restriction. The Sri Lankan Commission also shares many of the challenges that its Indian counterpart faces, namely, lack of adequate resources and non-cooperation from the government and the police.

Apart from financial resources, the lack of human resources also impacts on the efficiency of commissions in South Asia. Addressing human rights violations by the police requires strong investigative skills and it is not easy to find trained civilian investigators in the region. Using investigators who are not properly trained can result in justice being denied to the public. For example, in a particular case in Sri Lanka in 2003, a coordinator of the Commission found allegations of torture of a minor to be false. Following international criticism, an independent inquiry was instituted by the Commission to review this case, which found that the coordinator in charge of an entire province did not have the competence and training to conduct such inquiries.¹⁸⁶ In such cases where skilled investigators are lacking, a Commission may second police officers solely for the purposes of investigations. However, much care has to be taken to ensure that these officers have some background in human rights and that further periodic training is provided to them. Without civilian superiority in staffing, the perceived bias that police personnel may have can offset the benefits of their investigative skills. In India, the appointment of a former chief of a federal police force as a member of the Commission raised many eyebrows and a public interest case was filed in the Supreme Court on this issue.

Another major obstacle to effective functioning of the Commissions is police resistance, which manifests in a lack of police cooperation or police intimidation. For example, in Sri Lanka, several staff of the Commission were threatened and manhandled by police officers in June 2004, when they visited the Payagala police station to investigate complaints of torture.¹⁸⁷

To ensure that governments do not ignore Commission recommendations, the laws in India and Sri Lanka provide that the Government or the head of the institution to which the recommendations have been made must provide an action taken report within a specified time. In Sri Lanka, if the Commission does not receive this action taken report or if it considers the report to be inadequate, it is empowered to “make a full report of the facts to the President who shall cause the report to be laid before the Parliament.” In India, the inquiry reports are published and the law mandates the government to lay the report in the parliament “along with a memorandum of action taken or proposed to be taken... and the reasons for non-acceptance of the recommendations, if any.”¹⁸⁸ However the lack of political will means that the state governments refuse to comply with its recommendations “by simply ignoring them or by furnishing a long bureaucratic discourse on how compliance with the recommendations is not in public interest (read governmental interest)”.¹⁸⁹ In many cases, there may be partial compliance¹⁹⁰ or delayed compliance. The Indian Commission, however, is also empowered to approach the Supreme Court and the High Courts for appropriate directions and writs, and it has done this on a few occasions.¹⁹¹

Ombudsman

In its traditional form, the Ombudsman is an office headed by an independent high-level public official, who receives complaints about injustice and maladministration committed by government agencies, officials or employees. Most offices of the Ombudsman around the Commonwealth remain focused on this traditional role, but increasingly, they are expanding their scope to deal with a broader range of issues, including human rights and corruption, and also becoming more significant actors in oversight of the police.

Except for Maldives and Bangladesh,¹⁹² all the other countries in the region have an Ombudsman, but they are not perceived as strong oversight institutions, especially with respect to police misconduct. India does not have an Ombudsman at the national level and most provincial ones (*Lokayuktas*) have no jurisdiction over senior India Police Service officers.¹⁹³ Even where *Lokayuktas* do have such powers,¹⁹⁴ governments and the police departments routinely ignore their recommendations. In Pakistan, the federal Ombudsman has jurisdiction over federal law enforcement agencies, whereas the four provincial Ombudsman offices have jurisdiction over their respective provincial police forces. However, their powers to investigate the police are regarded weak and the police rarely accept their recommendations.

In Sri Lanka, the Constitution¹⁹⁵ empowers the Ombudsman or the Office of the Parliamentary Commissioner for Administration¹⁹⁶ to investigate and report upon cases of infringement of



fundamental rights and other injustices by public officers. If the Head of the Department or the Minister in charge fail to take action following a report, the failure can be reported either to the President or Parliament with appropriate recommendations for remedial action. Despite these powers, the Ombudsman is not regarded as a strong or effective accountability mechanism in the country. This is largely because of faulty appointments procedure. The people hardly approach the Ombudsman with their complaints because they have no faith in the President's appointee to address their grievances.

Dedicated civilian complaints agencies

Pakistan and Sri Lanka have experimented with civilian oversight mechanisms dedicated solely to investigate complaints against the police. Maldives has also set up a Police Integrity Commission comprising government and non-government members. However as of February 2007, the Police Integrity Commission existed merely on paper and the members have not had any meetings, with many not even clear about their role and mandate.¹⁹⁷ Although the Indian Supreme Court has directed central and state governments to establish police complaints agencies at the state and the district level, governments are strongly opposing their creation.¹⁹⁸ Where the agencies have been put in place, the model put forward by the Supreme Court has been watered down, with less independence and fewer powers, through problematic membership and appointment procedures, limited mandates and little power.

Public Safety Commissions and Police Complaint Authorities of Pakistan

Pakistan's 2002 Police Order created different external mechanisms for police accountability at various levels from the local to the federal. These were diluted in 2004, after the provincial governments refused to implement the law.

Public Safety Commissions and Police Complaints Authorities were the two bodies envisaged by the Pakistani law to insulate the police from illegitimate political pressure, and hold them accountable for their performance and misconduct. The Safety Commissions were to be established at district, capital city, provincial and national levels, to insulate the police from extraneous pressures and oversee the functioning of the police. At the district and the capital city level, for example, these Commissions were empowered to receive public complaints against police excesses and report lack of departmental action against such errant officers to the head of the police or the Government or the Complaints Authority. With half its membership drawn from elected representative at different levels (including the treasury and opposition members at the provincial and the federal level) and the other half comprising civilian members, the Commissions were a democratic mix of a civilian oversight and parliamentary oversight mechanism.

Pakistan's Public Complaints Authorities were imagined as an independent, civilian oversight mechanism empowered to receive complaints against members of police and enquire into serious ones.¹⁹⁹ The Authorities were supposed to be established at both the provincial and federal levels. These Authorities could appoint officers to inquire into public complaints and supervise these inquiry proceedings and were further empowered to direct the department to take disciplinary action on the basis of the inquiry reports. In order to ensure effective and unbiased police investigations, these Authorities also had the power to "recommend disciplinary action against an enquiry officer for wilful neglect or mishandling of an enquiry."²⁰⁰

The Safety Commission and the Complaints Authorities were dramatically transformed under the 2004 Amendment Ordinance that merged these bodies to form Public Safety and Police Complaints Commission, at both the district and provincial levels. While most of the functions remain same, the composition of the members of the Commissions has been politicised. The District Public Safety and Police Complaints Commission now has Members of the Provincial Assemblies and the National Assembly of the district appointed by the Government. There is no requirement to have members of opposition on board. At the provincial level, however, these bodies are required to have members from the opposition. But the earlier 2002 law that required equal number of members from the opposition has been diluted. Under 2004 law, the provincial Commissions will have twice the number of treasury members, again increasing the risk of politicisation of the Commission.

Despite these changes, these bodies at different levels could play a huge role in holding the police to account, if they are implemented properly. Lack of political will usually manifests in under-resourcing, police non-cooperation and a lack of attention and support for recommendations. In Pakistan, the process of establishing these bodies itself has been slow for a variety of reasons, including a lack of political will. To begin with, the Chief Ministers wanted the powers of Safety Commissions to be trimmed. Then, there were delays on the part of provincial assemblies in terms of electing members who would sit on the Public Safety Commissions. Even where Public Safety Commissions have been established, they face many problems, including lack of office space, staff and other facilities. The challenge is not only to create these bodies but also to ensure that they produce the desired result.²⁰¹

National Police Commission of Sri Lanka

The National Police Commission, composed entirely of civilians, is empowered to insulate the police from political interference and investigate public complaints against the police. It is mandated to exercise these powers in consultation with the Inspector General of Police.²⁰²

In the first three years of its operation the Commission was successful in building a reputation for itself as insulating the police from political pressures. Unfortunately, it failed to build any credibility in its handling of public complaints. The fact that it was composed entirely of civilians goes a long way to ensure that there is no bias towards the police, but it has also meant that the members lacked adequate investigative experience. To begin with, it delegated all its powers of investigation back to the police. As this involved the police investigating cases against themselves, the procedure lacked credibility and public criticism forced the Commission to withdraw this delegation. In October 2004, the Commission created a Police Complaints Committee of the Commission mandated to deal with public complaints. In practice, this Committee hired retired police officers to investigate cases and still refers cases back to the police for investigation. While the Committee claimed to monitor these investigations in respect of serious cases, there was no specified procedure for this. In fact, the biggest drawback of the Commission was its failure to develop a procedure to entertain and investigate public complaints as mandated by the law.²⁰³ In 2006, after the term of the Commission finished, the President directly made appointments to the Commission in direct contravention of the 17th Constitutional amendment. Owing to its illegitimate existence, the reconstituted Commission enjoys no public confidence and it is because of this that its "recent gazetting of a Public Complaints Procedure against police officers and the police service, has not been met with the unconditional approval that such an action, in fact, deserves."²⁰⁴

Managing the public complaints – investigate the serious ones; monitor the rest

Irrespective of the number of staff an oversight agency has, it is never going to be able to conduct all investigations into complaints against the police. While it is undesirable for oversight agencies to hand over all investigations to the police, pressure of work and paucity of resources means that nearly all oversight agencies rely to some extent on the police to



conduct investigations. This is not necessarily a bad thing – not the least because police discipline is primarily a police responsibility – but it needs to be managed carefully if public confidence in the complaints system is to be retained. Where the police reputation for corruption is high, or the police organisation is perceived as brutal and biased, delegating investigation back to the police does little to ensure public comfort or improved accountability, unless there is efficient and vigorous monitoring and supervision by the external agency. Most agencies have a system for categorising complaints, and retain powers to investigate those that are either serious in nature (those involving deaths, torture, or racial bias) or involve public interest. Complaints agencies like those in New South Wales (Australia) and England retain the power to conduct their own investigation in these cases, so that members of the public have no cause to suspect that the investigations were biased. Even with respect to the cases that are delegated to the police, these bodies tend to closely supervise investigations by the police, so as to ensure impartiality of police investigations.

A model police complaints agency

In New South Wales, Australia, the Police Integrity Commission is given wide investigative powers. Here, all complaints against the police are divided up into two categories. Category 1 cases²⁰⁵ are serious offences and are investigated by the Commission. Category 2 complaints are less serious, and are generally referred to the police or the Ombudsman, but the Commission is empowered to oversee these complaint investigations if it chooses.

The Commission, indeed, has full discretion over what matters to take up for investigation and has traditional police investigative powers to be issued with search warrants, as well as enter and search public premises. It is also empowered to obtain listening device or telecommunications interception warrants while carrying out its investigations. The Commission additionally has very strong powers to obtain information and can compel the production of documents and witnesses before it. It is empowered to protect witnesses²⁰⁶ and is authorised to hold public and private hearings in relation to any matter.²⁰⁷

Developing systems of coordination and referral

Countries like Sri Lanka, with multiple civilian oversight agencies contributing to police accountability, need to develop a system of coordination and referrals that carves out jurisdiction and protects against overlapping, duplication and contradictory recommendations. In South Africa, which has both a Human Rights Commission and an independent police complaints agency, the Commission refers all police-related complaints to the latter. New South Wales, Australia, has a system of classifying and managing complaints that allocates specific roles and responsibilities to the Police Integrity Commission, the Police Service and the Ombudsman. The state Police Service retains first responsibility for investigating most complaints “to foster high standards of professionalism and integrity, and to make it primarily responsible for its own discipline”.²⁰⁸ The Ombudsman oversees these investigations and can ask the Commissioner of Police to review the outcome or can directly investigate the complaint. Meanwhile the Police Integrity Commission is mandated to address serious matters of corruption and misconduct, particularly if these are systemic. This may involve establishing joint inquiries with the police, or referring cases back for investigations – in such cases, it also monitors police investigations.

At least one civilian oversight agency – a must

Across the Commonwealth, countries are increasingly realising that the presence of at least one external, independent civilian agency to ensure independent and unbiased investigations into allegations of police abuse and non-performance can send the message that the police will be held accountable for wrong doing. Best practice indicates that agencies dedicated to deal with complaints against the police are the most successful in holding the police account. This is because as single focus agencies, they can develop expertise in policing issues and investigative techniques, and with greater knowledge, increase capacity to analyse patterns of police conduct and performance. In any case, however independent oversight is structured, political will and strong leadership of both the police and the independent bodies is essential for building a truly accountable and responsive policing system.

Commissions of Inquiry

Governments across the region have set up Independent Commissions of Inquiry to inquire into specific cases of public interest, usually in response to public outcry. These are ad-hoc commissions to inquire into a particular incident of police abuse or an ongoing pattern of human rights violation. These Commissions can be a strong mechanism of accountability in not only establishing facts but also in recommending systemic changes.

Across the Commonwealth, such commissions have recommended systemic changes that were catalytic in reforming the police. While the Macpherson Inquiry into matters arising from the death of Stephen Lawrence revealed institutional bias in the UK police and paved the way to reform by suggesting mechanisms to address the malady, the Wood Royal Commission into the New South Wales Police Service in Australia uncovered systemic and entrenched corruption in the police as well as pedophile activities in the police service, leading to sweeping systemic reform including the setting up of the Police Integrity Commission.

However in South Asia, these Commissions have too often been instituted as mere sops to pacify the public in the hope that time will heal wounds. Mostly, governments ignore the recommendations of these Commissions. The neglect of the Maharashtra state Government in India in failing to implement the important recommendations of a report of the Sri Krishna Commission of Inquiry is a good example of this. The Commission of Inquiry was appointed to inquire into communal riots in Mumbai. The report had indicted police officers and the department for endemic communalism and yet its recommendations continue to gather dust.

In September 2006, the President of Sri Lanka announced the government's intention to set up an international independent commission to probe abductions, disappearances and extra-judicial killings in all areas of Sri Lanka. However, to the disappointment of many, what was actually set up was a national Commission of Inquiry to conduct inquiries and investigations, and an International Independent Group of Eminent Persons to observe the functioning of the Commission of Inquiry. Given the opaque process of appointments (nominations by the President) to the Commission coupled with the previous experience in the country of reports not being made public, most are sceptical that this might turn out to be yet another futile exercise by the government to fool international critics. Despite promises, the Witness Protection Unit has not been created and in its absence, both the human rights activists and the International Group fear that not much evidence would be available to the Commission.²⁰⁹ The role of the International Group is very limited and their ability to make public statements is severely curtailed. Yet the Group has on two separate occasions criticised the influence that the Attorney General's Department has over the Commission and observed that this "compromise[s] national and international standards of independence and impartiality that are central to the credibility and public confidence of the Commission".²¹⁰

CHAPTER 11



People have the power: Account to society

In a democracy, the police account not only to the governments and courts but also to the people they serve. People from all spheres of life need to feel sure that they can trust the police, that the police will prioritise their concerns and that they will not be subject to abuses or corruption. Marginalised people and communities usually struggle to get their concerns addressed by government agencies, and experience indicates that their political rights and opportunities can be bolstered through organised action. Civil society organisations can help get the concerns of poor, marginalised and vulnerable groups addressed by both policy makers and police managers.

The premise of professional policing is based on consent given by society to be policed. This means that police must be held accountable to the community for their performance and conduct. The quality of policing affects all members of the community and requires their close cooperation. Sir Robert Peel in introducing a bill to establish a police organisation in London argued that the police must “recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect”.²¹¹

Across the world, there is a growing recognition of the importance of deeper community involvement in issues relating to human rights, democracy and governance. The Commonwealth Heads of Government recognised this in 2003 when they stated that one of the objectives they seek to promote is “active participation of civil society”.²¹² However, not many countries in the Commonwealth have gone beyond acknowledging “the need for stronger links and better two-way communication and coordination between the official and non-governmental Commonwealth”²¹³ to actually realising this goal. Policing, in fact, has been largely a guarded domain with very little transparency and only very few jurisdictions (such as South Africa, UK and Canada) have institutionalised police cooperation and coordination with the community through either law or practice.

What is civil society?

There are many and varying definitions of civil society. In the Commonwealth,²¹⁴ the term *civil society* is used to describe organised groups of citizens, who come together voluntarily to pursue those interests, values and purposes termed the common good. It includes non-government organisations, trade unions, community groups, professional guilds, political parties, informal networks, faith-based associations, student organisations, parts of media and academia, and business chambers.

All must engage...

Contrary to the idea that policing issues concern only victims of crime, suspects or human rights organisations, the quality of policing affects all members of the community. Good policing contributes to creating an environment where other rights can be realised and development can flourish. People from all spheres of life need to feel sure that they can trust the police, that the police will prioritise their concerns and that they will not be subject to abuses or corruption. Marginalised people and communities usually struggle to get their concerns addressed by government agencies, and experience indicates that their political rights and opportunities can be bolstered through organised action. Civil society organisations can help get the concerns of poor, marginalised and vulnerable groups addressed by both policy makers and police managers.

...But position and equip yourself

Before civil society organisations can take up the task of engaging with policy makers, they need to equip themselves with the legal and technical knowledge and skills around policing and police accountability, which is a specialised and somewhat technical issue. As an expert points out, “One of the problems confronted by public security reform efforts through much of the developing world is the lack of local civilian expertise in the issues. Particularly in countries with long histories of repressive government and military pre-eminence, there are few policymakers, academics and other civilians with expertise to develop and implement public security policies.”²¹⁵



Liase and build networks and coalitions

It is now a well-accepted fact that it is very important for civil society organisations to build coalitions and networks with other non-government organisations, trade unions, media, professional associations and academia as the diversity and numbers lend credibility and strength to their voice. In order to play a meaningful role in policing, non-government organisations need to equip themselves adequately, and liasing with professional associations like lawyers, judges, prosecutors and even retired police personnel helps immensely. It is these groups that can help human rights organisation and non-government organisations to understand the role and functioning of police and draw comparative examples from countries that have greater and better police accountability.

Recognise victims and media as important allies

Victims and victims groups give a human face to the problem of unaccountable policing and have been important catalysts in shaping public opinion. Media attention on the suffering of a single family in England finally created the political will within government to bring about changes to address institutional racism within police.²¹⁶

Besides its central function of conveying information to the community, the media is well recognised for its enormous influence in developing public opinion. Crime stories make good copy. The emphasis, however, is often on the sensational rather than the prosaic structural and process issues that ground poor policing. In the absence of in-depth analysis of how police accountability can be brought about, the public is deprived of a platform for informed progressive debate and advocacy. Although many groups in the Commonwealth are training the media on the intricacies of policing and accountability, not many in South Asia are doing this. Informed reporting and sustained campaigns after the initial excitement of a scandal has blown over can exert significant political pressure on policy-makers.

Engagement is fraught with tensions and dangers

Civil society groups have found that traditional relationships of mistrust and hostility between human rights organisations and the police make engagement difficult, especially when it is sometimes fraught with dangers for the individuals involved in confronting the police.

In countries like Pakistan, the police have not shied from brutally and publicly attacking journalists and human rights defenders. On 3 May 2005, during peaceful demonstrations in honour of World Press Freedom Day, about 50 journalists were injured when police baton-charged demonstrators and as many as 60 journalists were forcibly detained for two hours.²¹⁷ Earlier in April, police surrounded about 50 journalists travelling with an opposition leader as they exited a plane and forced them to surrender camera equipment, audio recorders, and mobile phones. Those who resisted were slapped and abused by the police.²¹⁸ On 15 May 2005, in yet another harsh measure, the Pakistan police used unexpected force to break up a peaceful rally and arrested about 40 human rights defenders who were later released without being charged.²¹⁹

The possibility of engagement is further reduced with governments in the region increasingly encroaching even on the existing limited space that for civil society. While in countries like Maldives, human rights organisations have found it impossible to get registered at all, others like India and Bangladesh are proposing laws to regulate non-government organisations and other civil society organisations in the name of national security and fighting global terrorism. While the bill in Bangladesh aimed to regulate foreign-aided organisations was ultimately withdrawn after domestic and international opposition, its counterpart in India continues to raise many issues of concern for the voluntary sector.

Dangerous liaisons

The 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms²²⁰ lays down a series of principles and standards aimed at ensuring that states fully support the efforts of human rights defenders and ensure that they are free to conduct their legitimate activities without hindrance or fear of reprisals. But this has not had much practical effect in countries where human rights defenders are in constant danger.

Activists have been the victims of extrajudicial killings, disappearances, death threats, detentions and harassment by state agents.²²¹ In Punjab, a state in India, a human rights defender who investigated cases of extrajudicial killings and illegal cremations by the Punjab police during the height of terrorism and brought them before the Supreme Court, disappeared in 1996. Upon the Court's direction, a federal police organisation investigated the case, and indicted police officers for abducting and killing Mr. Khalra.

Where there is a will, there is a way

Despite obstacles, civil society organisations in the region continue to advocate for police reform and use different mechanisms, both formal and informal, to hold the police to account. Some engage, others confront, and some do both. For instance, the Commonwealth Human Rights Initiative, an international non-government organisations headquartered at India, works with the Ministry of Home Affairs at the federal level in training police officers, collaborates with some state governments to forge stronger police community relations through community policing, engages with serving and retired police leaders to build a platform for police reform and confronts the state and national governments on human rights issues.

Engaging with policy makers and the police

Creating political will to move the agenda forward requires constant engagement with lawmakers. This can be done by drawing attention to policing issues through protest marches, candlelight vigils, pamphlets, radio plays or by policy level interventions. Timing is crucial in these efforts. From getting police reform into political manifestos at election time; holding winners to their promises; providing submissions to parliamentary committees; to intervening at all levels of the law making and scrutiny processes where police functioning and performance are up for discussion – opportunities abound. In demanding accountability, advocates seek ratification of treaties, the creation of oversight bodies, and enactment of laws that promote accountability and transparency such as right to information, whistle-blower protection, and anti-corruption laws. They also argue for and contribute to designing police Acts that align with constitutional and international standards. At the very least, civil society groups have demanded the right to be heard, and the right to participate in policy processes concerning policing and community safety.

Monitoring and documenting

Experience indicates that calls for reform must be based on substantiated facts rather than anecdotal stories. Human rights organisations across the region, monitor and document cases of police abuse. In many countries, it is extremely difficult to get information on policing. In Pakistan, domestic civil society organisations like the Human Rights Commission of Pakistan are usually the only source of information on police abuses and violations. Where they exist, right to information laws are extremely helpful in demanding transparency.

International organisations like Amnesty and Human Rights Watch, and regional organisations including the Asia Human Rights Commission also monitor police abuses. This international naming and shaming often causes deep embarrassment to governments, and can push them to affect reform. In Maldives, the absence of space for dissent convinced activists to use international forums to demand improvement. Many web based papers and organisations based in other jurisdictions such as Sri Lanka, UK and Australia have criticised the governance and policing in the country and have brought international attention to the issues. The result is that the Government has promised constitutional and other institutional reform. It is international pressure that convinced Maldives President to separate the police from the National Security Service in September 2004 and propose the Road Map for the Democratic Reform Agenda²²³ in March 2006.

Information laws: a powerful tool

In Mumbai, India, a lone public policy advocate substantiated widely held suspicions of illegitimate political interference in police transfers using the right to information law. A call for information revealed that in a single year, the police chief had received no less than 143 requests from politicians recommending favourites to different posts. Many came from the offices of Chief Minister or the Deputy Chief Minister of the State. An analysis of the transfers showed they were nearly always either away from conflict zones, or into areas where there were better opportunities for making money off bribes. Eventually this led to 135 police officers being issued warning letters for trying, against regulations, to bring pressure from outside the department for personal gain.²²²

Using courts: public interest litigation - an important tool

The Bangladesh Legal Aid and Services Trust (BLAST), a non-government organisation, institutes public interest litigation. Some of BLAST's cases have challenged the police in Bangladesh, on matters like arrest strategies that target homeless people, and torture in police custody. In a matter concerning vast police abuse of a provision in the Criminal Procedure Code that gave wide powers to the police to arrest anyone without a warrant, BLAST approached the Supreme Court. They alleged that the police grossly abuse this provision to arrest people for personal and political purposes, on the spurious grounds that they suspect the concerned person of having committed an offence. To combat this problem, the Supreme Court gave a detailed explanation of the terms "reasonable" and "suspicion" used in the provision granting the arrest powers. The court laid down extensive guidelines on arrest procedures with a view to check the abuse of the provision by the police²²⁴.

Creating public awareness and building public opinion

Any effective reform process requires public support. Civil society organisations use a variety of techniques to build this support. In societies with high levels of poverty and little education, lack of knowledge of rights and of the limitations of police power is a major obstacle. Many groups sensitise the police and educate the public.

Experience indicates that creating public awareness is not enough by itself; there must be a public opinion in favour of human rights centred policing that decries police abuse of power in any situation. When advocating reform, it is important to bear in mind the fact that where public opinion is ill-informed, it becomes a part of the problem rather than the solution. In the region, public opinion is often more easily swayed towards calling for tough policing

than for reform that will bring about systemic changes. In a climate vitiated by violence and an even greater fear of violence, it is not surprising that there is an approval for tough policing, which is often a euphemism for lawless policing. These attitudes present a significant challenge for those campaigning for human rights-oriented police reform in high-crime or conflict settings. Experiences of heavy-handed police being able to get away with bad practices leave a legacy of impunity, habits of brutality and acceptance of lawlessness that seep into the organisational psyche and continue to haunt communities. It is therefore essential to show the harmful consequences of tough policing along with explaining that following human rights standards is the most effective long-term solution to community violence, terrorism and criminal behaviour.

Training

Areas where civil society actors have been allowed to participate in policing are human rights training and community policing. Police training is the state's responsibility. Nevertheless in countries where non-government organisations have little access to police, training in human rights, women or child rights, and leadership are all welcome means of engaging positively with the police. Gender issues are one area where this has had some impact, whether it be domestic violence cases or those relating to sexual assault. Countries including India and Pakistan have established special women police stations to deal with women victims of crime. In places like Mumbai (Maharashtra), Delhi and Raipur (Chhattisgarh) in India, civil society actors including psychologists and doctors work with the police in assisting victims of sexual assault and domestic violence.

To train or not to train...

Many question the efficacy of training the police, as training does not always seem to change the attitude of police personnel. Critics argue that that police are amenable to this kind of engagement on soft or exotic subjects with non-government groups and experts of varying ability more as a sop to public pressure rather than genuine institutional commitment. Many organisations in different contexts share an increasing ambivalence about the merits of participating in police training unless these one-off orientation programmes or experimental series are initiated with the clear objective of becoming a core part of the regular curriculum, and a factor in changing future practice and performance.

Community policing

Community policing essentially "signifies a collaboration between the police and the community that identifies and solves community problems".²²⁵ Its underlying philosophy is that "the dynamics of crime are often highly localised, that police require community cooperation to fight crime effectively, and that police should be providing a service to the people and be accountable downward to citizens for their performance as well as upwardly accountable to the government".²²⁶

While countries like Singapore, UK, Canada and South Africa have institutionalised community policing, others are still experimenting with it. In South Asia, although all the countries, except for Maldives, are testing it out, only Pakistan has recognised its importance in law.

Sustaining community policing initiatives requires determined effort by dedicated catalytic forces, either within the police or from civil society. Several factors determine the success of partnerships: police leaderships need to be open to significant change in front-line policing; while traditionally-centralised police organisations are required to shift decision-making and responsibility downward and recognise that it is street-level officers who have to make the new community policing approach work. Police and public have to interact as equals and with a sense of shared values.

Citizen Police Liaison Committees

The Police Order 2002 of Pakistan empowers the government to establish Citizen Police Liaison Committees as “voluntary, self financing and autonomous bodies” for “developing a mechanism for liaison between aggrieved citizens and police for providing relief” and assisting police to efficiently discharge their duties.²²⁷ While the district Citizen Police Liaison Committees have been established in Lahore, Faisalabad, Sialkot, Peshawar, Karachi and Quetta, over 125 more are still to be created in other districts of Pakistan on the model of the Committee in Karachi.

In Karachi, the Citizen Police Liaison Committee was initially formed in 1989 in response to an increasing crime rate. From vehicle snatching to kidnapping, the cases were also affecting the business community, which approached the Governor to set up a committee. The Committee has sought to improve the situation through information systems that make police work more effective, efficient, transparent, and accountable. It contributes to the protection of citizen’s rights and security by improving police-community relations and making police accessible by having a presence of respected citizens as justices of the peace at police stations.²²⁸ The Committee has Zonal Reporting Cells at the district level and a Central Reporting Cell at Sindh Governor’s Secretariat, which comprises Shift Controllers, Secretaries, Computer Operators, Citizen Liaison Officers, Telephone Operators, and Police Complaint Cell Officers. It is equipped with the latest computer technology and contains, among other things, databases containing stolen property, First Information Reports, criminal records and computerised identity kits.²²⁹

Bringing the police and communities together

Organisations in many Commonwealth countries are experimenting with community policing; bringing communities and police together to share concerns and solve problems. Experience indicates that in many developing countries governments may not be willing to commit to such programmes unless they can be convinced of the benefits. In these situations, NGOs have sometimes initiated pilot projects that demonstrate success and provide models for further implementation.

CHRI embarked on a community policing project in the newly formed state of Chhattisgarh, India in 2002. The project aims to build dialogue between the police and the community at the local level, which, if successful, could be reproduced across the state. It runs at two police stations where the beat-level police and the local community meet twice a week. Another monthly meeting is facilitated by CHRI where the officers and community liaison group representatives meet with the senior officers of the station to discuss problems that cannot be resolved at the beat-level meetings.

Prior to CHRI’s intervention, the beat system was not working and the senior officers were unknown to the community. The dialogue has brought some transparency and accountability: at the meetings, problems are recorded and at subsequent meetings both the police and members of the community report on actions taken. A form of participatory policing is emerging, where the community decides together with the police, where and when patrols are necessary, and share information about local safety problems. The project has the support of the state police department and the state Government, which is willing to replicate the model if it is shown to succeed.

Experiments with community policing have created new opportunities for individuals and groups to practically engage in processes of changing police organisations. Growing global concern with crime and security has created fertile ground for new dialogues about police performance and accountability. As more people feel insecure and unsafe, they become interested in knowing how the government and the police plan to protect life and property and the need for deeper engagement between the government, police and the community becomes more urgent.

Recommendations

CHRI is committed to promoting a model of democratic policing in which the police are:

- ▶ Subject to the rule of law and responsible to protect human rights;
- ▶ Accountable to a variety of institutions;
- ▶ Transparent about policies, decisions and actions taken in most spheres of their work;
- ▶ Responsive to the people they serve; and
- ▶ Representative of the people they serve.

This is the model of policing that democracy demands and governments are duty bound to provide. Reforming policing across the Commonwealth requires amending and refining laws, putting in place innovative institutional arrangements and changing the culture within police organisations. With political will and the effort and cooperation of governments, police officials and civil society, democratic policing will become a reality.

Summary of findings

- ▶ **Police reform in South Asia is too important to neglect and too urgent to delay.**
- ▶ **There is widespread police abuse of powers that adversely effect the enjoyment of rights in South Asia.**
- ▶ **The public experience of policing is largely characterised by torture, extra-judicial executions, disappearances, excessive use of force, failure to follow due process, bias, discrimination and corruption.**
- ▶ **Police accountability – from accountability to the community to accountability to the executive, judiciary and parliament – is critical in solving the problems posed by South Asian policing.**
- ▶ **Impunity and illegitimate political interference in policing prevent police accountability.**
- ▶ **Existing accountability mechanisms must be strengthened and new ones created. The crucial role of independent civilian oversight must be recognised. The process and criteria of appointments to accountability systems must be fair and transparent. Mechanisms must be adequately resourced, and governments and police must respect their recommendations and decisions.**
- ▶ **Reform is prevented by a lack of political will. Political will can be created through public support and opinion.**
- ▶ **Police reform must take place with the close engagement of and in consultation with the community and civil society.**

South Asian Commonwealth countries must:

Ratify international human rights treaties within a set time frame and consistently report on and monitor the implementation of past commitments.

Affirm compliance with the standards of policing required by the International Bill of Rights, the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms.

Review and recast police laws, rules and regulations, especially those that pre-date the 1948 Universal Declaration of Human Rights, to incorporate and further the principles of democratic policing.

Re-examine internal security laws to minimise the possibility of impunity and remove obstacles to prosecution or victim compensation and civil suits for police wrongdoing.

Protect whistleblowers from harm and victimisation through legislation and supportive systems.

Strengthen traditional executive, legislative, and judicial oversight of police and put in place and support multiple additional independent civilian oversight mechanisms, such as an ombudsman, human rights commission, anti-corruption body or dedicated police complaints agency.

Ensure that oversight by the executive does not illegitimately interfere with the operational independence of the police through institutional arrangements such as strong, autonomous police service boards, commissions and authorities.

Publish annual performance targets and evaluation measurements against which police adherence to human rights, value for money, performance and community satisfaction can be publicly judged.

Design transparent and merit based procedures that can be measured against objective published criteria for representative and non-discriminatory recruitment, selection, and appointment of leadership and rank and file.

Ensure good service conditions for police.

Initiate, in collaboration with police organisations, procedures and mechanisms designed to involve civil society groups and the community at large in creating policy, determining priorities, setting targets and evaluating performance.

Re-examine, in collaboration with police organisations the content, methodology and frequency of training to emphasise human rights awareness as a key skill for police officers.

Parliamentarians must:

Pressure the executive to provide accountable, effective, responsive, and representative police to the people through appropriate laws.

Ensure that the law-making process is transparent and participatory.

Secure effective mechanisms for parliamentary oversight of police.

Police leaders and police organisations must:

Ensure that upholding the rule of law and protecting human rights and democratic values are core values of policing integrated into police vision, policies and procedures, reinforced through training, and demonstrated in its work.

Send a strong signal that as an organisation of high professional standards, the police will perform well, be open and approachable, and not tolerate abuse of power, corruption, neglect of duty, subordination of the law or any misconduct or wrongdoing.

Ensure that internal accountability mechanisms are well resourced and are fair and firm, enjoying the support and confidence of the public, as well as police personnel.

Cooperate with external oversight mechanisms.

Ensure that the police organisation is representative of the population it serves; in particular by improving the representation and retention of minority groups and women, ensuring the work environment is suitable to their particular needs and providing equal career opportunities to all.

Ensure maximum possible transparency to build public confidence in the police and trust in police-community relationships.

Civil society must:

Equip itself to campaign for police reform and accountability by understanding the police, its environment, relevant laws, its resources, responsibilities and that of the government and oversight bodies.

Assess police functioning in accordance with national and international standards and continuously challenge and draw attention to police wrongdoing.

Demand and publicly disseminate information about policing to create discussion, participate actively in policy processes and public debates on policing issues and challenge the perception that policing is a technical issue only to be discussed by those in uniform.

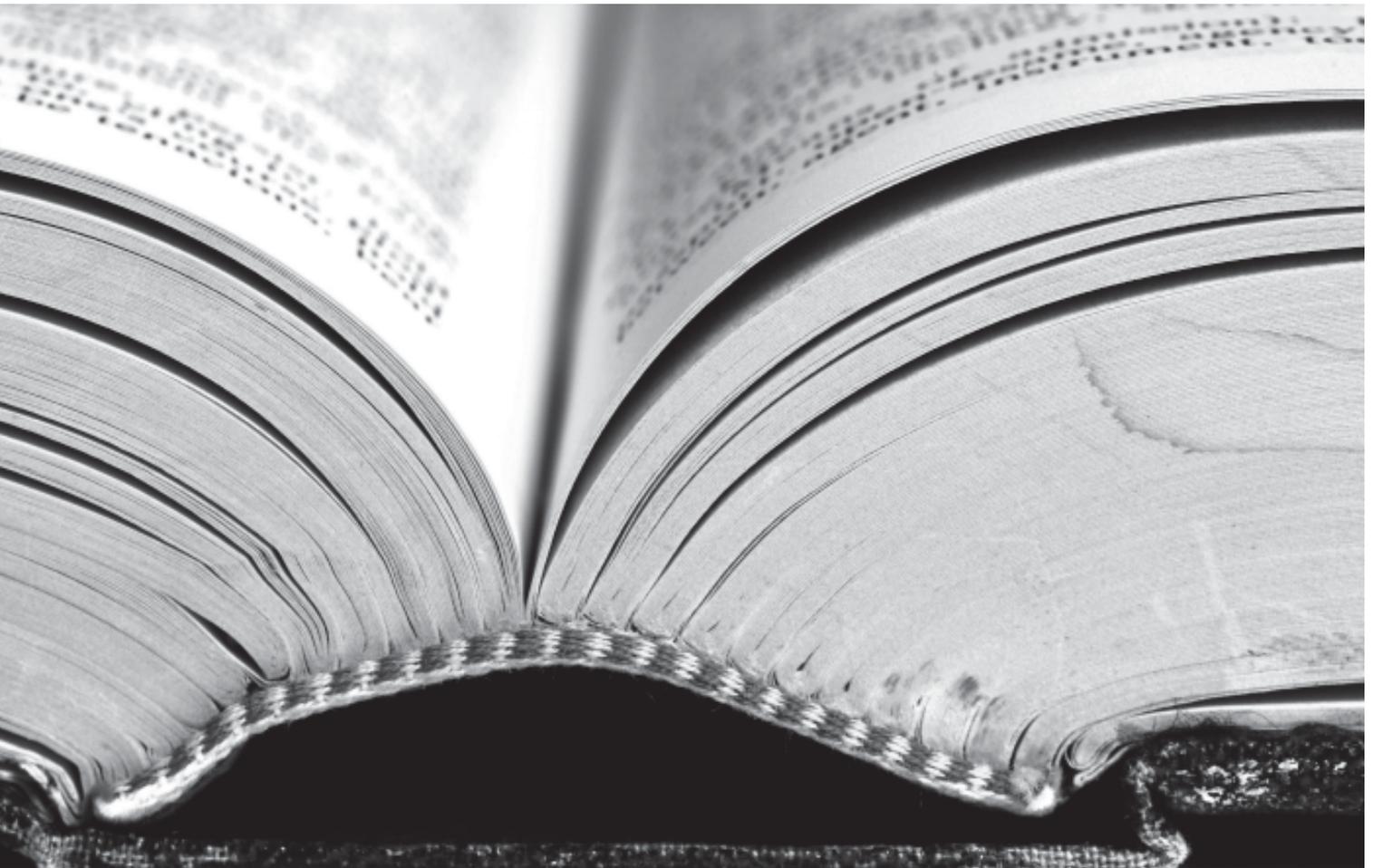
Engage in partnerships with the police to bring about community involvement and improve community safety.

Donors must:

Require that accountability and human rights issues are integrated into all donor-supported police reform programmes.

Ensure that all police reform programmes have a formal and structured process for constructive engagement with and inputs from civil society and the community.

Take firm measures against recipient governments that consistently fail to adhere to international human rights standards in practice or that use the police to curb civil liberties.



Endnotes

- ¹ See Article 38 of the Constitution of Maldives: <http://www.asianlii.org/mv/legis/const/1998/1.html> as on 17 July 2007.
- ² The word denotes people belonging to the Southern State of Tamil Nadu in India. Many people from this state settled in Sri Lanka during the British colonial period. Since independence, there has been a conflict between the majority Sinhalese community and the Tamil minority.
- ³ Human Rights Watch (2005) *World Report 2005: Pakistan*, January: <http://hrw.org/english/docs/2004/12/14/pakist9852.htm> as on 25 May 2007.
- ⁴ Bureau of Democracy, Human Rights, and Labor, (2007) *Country Reports on Human Rights Practices 2006: Maldives*, United States Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2006/78872.htm> as on 1 June 2007.
- ⁵ The strength of the Maldives police force is taken from the Bureau of Democracy, Human Rights, and Labor, (2007) *Country Reports on Human Rights Practices 2006: Maldives*, United States Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2006/78872.htm> as on 1 June 2007.
- ⁶ Transparency International Sri Lanka (2006) *IN PURSUIT OF "ABSOLUTELY INTEGRITY": Identifying Causes for Police Corruption*: http://www.tisrilanka.org/ext_files/tisrlppeng.pdf as 17 May 2007.
- ⁷ See "Strength of Bangladesh police" as on 28 January 2007 at the official website: <http://www.police.gov.bd/index5.php?category=151> as on 10 July 2007.
- ⁸ Bureau of Police Research & Development (2006), *Data on Police Organisation in India (as on 1-1-2005)*, pp.29-30, March, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India.
- ⁹ See "police-people ratio" on the official website of the Bangladesh police: <http://www.police.gov.bd/index5.php?category=152> as on 10 July 2007.
- ¹⁰ See the official website of the Bureau of Police Research & Development, Government of India for the police-population ratio (1 January 2006): <http://www.bprd.gov.in/writereaddata/linkimages/Police%20ratio6581084760.pdf> as on 10 July 2007.
- ¹¹ Information based on email communication with Dr. Shoib Suddle, Director General, National Police Bureau, Pakistan.
- ¹² Heading of Section 7, Police Act, 1861.
- ¹³ Article 15 (c), Constitution of Maldives. [*Emphasis added*].
- ¹⁴ Article 156, Constitution of Maldives: "Acts passed by the People's Majlis and the People's Special Majlis [Parliament] and assented to by the President at any time prior to and after the commencement of this Constitution and includes the regulations made under such laws and practices of the government. In this Constitution the word 'law' also includes the norms and provisions of Shari 'ah established by the Noble Quran and the traditions of the Noble Prophet, and the rules derived therefrom."
- ¹⁵ Some states like Bihar, Tripura and Chhattisgarh have passed laws; others like Kerala, Haryana, Assam, Karnataka and Himachal are in the process of enacting these.
- ¹⁶ Preamble is a preliminary introduction to a statute or a constitution that usually explains its purpose.
- ¹⁷ Articles 3 and 4, *Police Order 2002* (Pakistan).
- ¹⁸ See the CHRI 2005 report. Rauch J., Prasad D., Mehta S., and Canineu M.L. "Police Accountability: Too important to neglect, too urgent to delay", 2005 *CHRI report by the International Advisory Commission of the Commonwealth Human Rights Initiative*: http://www.humanrightsinitiative.org/publications/chogm/chogm_2005/chogm_2005_full_report.pdf.
- ¹⁹ While signing a treaty merely indicates the state's support for it so that it should not act in a way that defeats the object and purpose of the treaty, the treaty does not legally bind it until "ratification" or "accession".
- ²⁰ The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, and the Committee on Migrant Workers
- ²¹ The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.
- ²² The confidential "1503 procedure" and the "1235 Procedure".
- ²³ The Economic and Social Council (ECOSOC) is a charter-based body of the UN. Among its responsibilities are encouraging universal respect to human rights, particularly through its subsidiary bodies such as the Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice.
- ²⁴ Sri Lanka has the second largest number of non-clarified cases of disappearances. See Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-19 October 1999): E/CN.4/2000/64/Add.1 (21 December 1999). The Government of Sri Lanka had appointed 4 Commissions of Inquiry, all indicting the police and the military.
- ²⁵ See Committee Against Torture (2002); Sri Lanka: CAT Article 20 Examinations Re: Systematic Torture CAT/A/57/44(2002).
- ²⁶ The 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the 1979 UN Code of Conduct for Law Enforcement Officials were both adopted by UN General Assembly resolutions. Resolutions adopted by the General Assembly and other UN bodies often deal with human rights and policing. They do not have the formal, legal and political status of the conventions or treaties and cannot be enforced by domestic courts of law. However, States' compliance with the resolutions demonstrates responsibility to the international community of nations.
- ²⁷ United Nations (1979) *Code of Conduct for Law Enforcement Officials*, Article 2: http://www.unhchr.ch/html/menu3/b/h_comp42.htm as on 23 May 2007.
- ²⁸ UN General Assembly (1979) *Resolution 34/169*, December 17.
- ²⁹ United Nations (1990) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 24: http://www.unhchr.ch/html/menu3/b/h_comp43.htm as on 25 May 2007.

- ³⁰ *Nallaratnam Singarasa v/s The Hon. Attorney General*, SC (Spl) L.A. No. 182/99. For a full text of the judgment, please see Asia Human Rights Commission (2006) *SRI LANKA: Have no illusions – the Supreme Court of Sri Lanka is a part of the human rights violation mechanism*, AS-217-2006 September 19: <http://www.ahrchk.net/statements/mainfile.php/2006statements/735/> as on 16 May 2007.
- ³¹ United Nations Committee Against Torture, (2002) *Sri Lanka: CAT Article 20 Examinations Re: Systematic Torture*, UN Doc. CAT A/57/44 (2002): http://www.bayefsky.com/html/srilanka_cat_article20.php as on 25 May 2007.
- ³² LTTE is an armed and often violent political group, which for nearly two decades has been fighting for autonomy for the Tamil community living in the north and east of Sri Lanka. The government of Sri Lanka recognises it as a terrorist group.
- ³³ Amnesty International (2002) *Sri Lanka: rape in custody*, AI Index: ASA 37/001/2002, 28 January: <http://web.amnesty.org/library/Index/ENGASA370012002?open&of=ENG-LKA> as on 25 May 2007.
- ³⁴ Redress (2004), *Torture in Bangladesh 1971 – 2004: making international commitments a reality and providing justice and reparations to victims*, the Redress Trust, London: <http://www.redress.org/publications/Bangladesh.pdf> as on 25 May 2007.
- ³⁵ Amnesty International (2000), *Bangladesh: Endemic torture since independence*, AI Index: ASA 13/008/2000, 29 November: <http://web.amnesty.org/library/Index/ENGASA130082000?open&of=ENG-BGD> as on 25 May 2007.
- ³⁶ Samad, S. (2003) 'A first-hand account of an arrested BD journalist', *South Asia Tribune*, Issue No. 29, Feb. 10-16, 2003.
- ³⁷ _____ (2007), *UN expert urges Bangladesh to stop police from murdering suspects*, Statement issued by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 28 March: <http://www.unhchr.ch/huridocda/huridoca.nsf/view01/6447F7BFE6FB01B7C12572AC005D9A26?opendocument> as on 27 June 2007.
- ³⁸ General Assembly, *The Declaration on the Protection of All Persons from Enforced Disappearance*, Resolution 47/133 of 18 December 1992.
- ³⁹ Human Rights Watch (2006), "Everyone lives in fear" – *Patterns of Impunity in Jammu and Kashmir*, September, Vol. 18, No. 11 (C).
- ⁴⁰ Working Group on Enforced or Involuntary Disappearances (1999) *Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999)*, 21 December; E/CN.4/2000/64/Add.1: [http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/E6D08BB09C61C6D7802568A9006830F1/\\$File/G9916479.pdf?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/E6D08BB09C61C6D7802568A9006830F1/$File/G9916479.pdf?OpenElement) as on 25 May 2007.
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- ¹⁷¹ India, Pakistan and Sri Lanka have Ombudsmen while Bangladesh and Maldives do not.
- ¹⁷² Pakistan, Sri Lanka and recently Maldives have created these bodies. A few states in India are beginning to experiment with these.
- ¹⁷³ The number of convictions is based on the Comments by the Government of Sri Lanka to the conclusions and recommendations of the Committee against Torture : Sri Lanka. 20/02/2007. CAT/C/LKA/CO/2/Add.1. (Follow-up Response by State Party). Also see Law and Society Trust and Asia Human Rights Commission (2005) "Prevalence of torture in Sri Lanka: persisting problems and outstanding issues" *An alternative report to the Committee Against Torture*, 7 November: <http://www.lawandsocietytrust.org/images/CAT%20Report%20Final.pdf> as on 30 May 2007
- ¹⁷⁴ See United Nations et. al, (1993) *Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles)*: <http://www.ohchr.org/english/about/publications/docs/fs19.htm#annex> as on 1 June 2007.
- ¹⁷⁵ Fourth Periodic Report of Sri Lanka submitted to the Human Rights Committee under Article 40 of the ICCPR. See CCPR/C/LKA/2002/4 (18 September 2002).
- ¹⁷⁶ Fourth Periodic Report of Sri Lanka submitted to the Human Rights Committee under Article 40 of the ICCPR. See CCPR/C/LKA/2002/4 (18 September 2002).
- ¹⁷⁷ In Sanjay Sitaram Mhasker's case, the NHRC received a complaint that Sanjay was picked up by the police and mercilessly beaten resulting in his death, and his death was masked as suicide by hanging. After calling for reports from the Government of Maharashtra, the NHRC concluded that death was caused in police custody by police officials and directed the Government to pay as interim compensation Rs. 3 lakhs to the next-of-kins of the deceased and also to prosecute the 19 delinquent public servants. See *Annual Report 2001-2002*, National Human Rights Commission at page 145.
- ¹⁷⁸ National Human Rights Commission (1999) *Guidelines on Police-Public Relations*, Dec. 22.
- ¹⁷⁹ National Human Rights Commission (1997) *Guidelines on Encounter Deaths*, March 29 and National Human Rights Commission (2003) *Revised Guidelines on Encounter Deaths*, Dec. 2.
- ¹⁸⁰ National Human Rights Commission (1999) *Guidelines on Arrest*, November 22.
- ¹⁸¹ National Human Rights Commission (2000) *Guidelines on Polygraph (Lie Detector) Tests*, January 11.
- ¹⁸² This was communicated by the National Human Rights Commission to the Chief Secretaries of all states and union territories in its letter dated December 14, 1993.
- ¹⁸³ Asia Human Rights Commission (2006) "SRI LANKA: The Human Rights Commission of Sri Lanka has stopped investigations into 2000 disappearance cases to avoid having to pay government compensation to the victims", a statement by Asia Human Rights Commission, AS-169-2006, 18 July: <http://www.ahrchk.net/statements/mainfile.php/2006statements/646/> as on 23 May 2007.
- ¹⁸⁴ See _____(2007) "Sri Lanka Human Rights Commission to reduce the time to complain on a rights violation" *ColomboPage*, Sri Lanka, July 7.
- ¹⁸⁵ Section 36, *The Protection of Human Rights Act*, 1993 (India).
- ¹⁸⁶ Asia Human Rights Commission, *Case of Chamila Bandara; the issue of the Kandy Coordinator and the rights of the people in Kandy for human rights protection*, Update on Urgent Appeal 39-2003, UP-57-2004.

- ¹⁸⁷ Asia Human Rights Commission (2004) *Human Rights Commission officers obstructed from carrying out their duties by the police*, Urgent Appeals-General, 2 July, UG-04-2004, <http://www.ahrchk.net/ua/mainfile.php/2004/724/> as on 25 May 2007.
- ¹⁸⁸ Section 20, *The Protection of Human Rights Act 1993* (India).
- ¹⁸⁹ Tiwana, M. (2004) "Needed: More effective human rights commissions in India" at page 3, Commonwealth Human Rights Initiative Newsletter, Vol. 11 Number 2, New Delhi, Summer 2004.
- ¹⁹⁰ Examples are not releasing the full amount of compensation or when there is a dual recommendation to pay compensation and take disciplinary action, doing one or the other. For details, see: Tiwana, M. (2004) "Needed: More effective human rights commissions in India" at page 3, *Commonwealth Human Rights Initiative Newsletter*, Vol. 11 Number 2, New Delhi, Summer 2004.
- ¹⁹¹ *NHRC vs. State of Arunachal Pradesh and Anr* AIR 1996 SC 1234.
- ¹⁹² Notably, Article 77 of the Constitution of Bangladesh provides that parliament may establish the office of Ombudsman. In 1980, the parliament passed the necessary Act but this law has never been notified and put into effect by any of the governments till today though more than 21 years have been passed since the passing of the Ombudsman Act 1980. The government had promised to appoint an Ombudsman but according to the USSD 2006 "Previous legislation authorizing the establishment of a human rights ombudsman remained dormant".
- ¹⁹³ These are police officers recruited by the Union Public Service Commission through a competitive examination placed at the top hierarchy in the police. These officers enjoy the highest levels of discretionary police powers.
- ¹⁹⁴ Some of the new Police laws that are being proposed or have been passed in the wake of the Supreme Court order have empowered the Lokayukta to deal with public complaints against the police.
- ¹⁹⁵ Article 156 of the Constitution of Sri Lanka.
- ¹⁹⁶ The Office was created by the Parliamentary Commissioner for Administration Act, No. 17 of 1981 and subsequently amended in 1994 to expand the powers of the Ombudsman.
- ¹⁹⁷ Based on communication with a member of the Police Integrity Commission dated 7 February 2007 and the report of the Bureau of Democracy, Human Rights, and Labor, (2007) *Country Reports on Human Rights Practices 2006: Maldives*, United States Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2006/78872.htm>.
- ¹⁹⁸ See CHRI website for the court order and the state responses to it at: http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/writ_petition.htm.
- ¹⁹⁹ Article 103, *Police Order 2002* (Pakistan).
- ²⁰⁰ Article 106, *Police Order 2002* (Pakistan).
- ²⁰¹ Information based on email exchange with Mr. Mukhtar Ahmed Ali, Executive Director, Centre for Peace and Development Initiatives, Pakistan.
- ²⁰² Article 155G, Constitution of Sri Lanka (17th Amendment).
- ²⁰³ Article 155 G (2), Constitution of Sri Lanka.
- ²⁰⁴ Pinto-Jayawardena, K. (2007) "Regretting what might have been: a critique of the National Police Commission of Sri Lanka" paper presented at the Roundtable on *Police Reform: A exchange of experiences from South Asia* held on 23 and 24 March 2007: <http://www.humanrightsinitiative.org/programs/aj/police/exchange/CHRI%20PAPER%20-%20MARCH%202007.doc> as on 22 May 2007.
- ²⁰⁵ In a nutshell, Category 1 complaints can be described as behaviour that constitutes corruption and other serious criminality; matters warranting dismissal from the Police Service; and matters in which it is unlikely that there will be public confidence in an internal police investigation (Police Integrity Commission, Special Report to Parliament, *Project Dresden II: Second audit of the quality of internal investigations*, June 2003, pg. 3).
- ²⁰⁶ Section 51 *The Police Integrity Commission Act, 1996* (New South Wales, Australia).
- ²⁰⁷ Section 20, *The Police Integrity Commission Act, 1996* (New South Wales, Australia).
- ²⁰⁸ Justice Wood, J. (2004) "In the Wake of the Royal Commission into the New South Wales Police Service", paper presented at the 18th International Conference, *Keeping justice systems just and accountable: a principled approach in challenging times*, organised by the International Society for the Reform of Criminal Law in Montreal, Quebec, Canada 8-12 August 2004: http://www.lawlink.nsw.gov.au/lawlink/Supreme_Court/ll_sc.nsf/pages/SCO_wood_080804 as on 31 May 2007.
- ²⁰⁹ Centre for Policy Alternatives (2007) "A commentary on the Commission of Inquiry and the International Independent Group of Eminent Persons" *CPA Policy Brief No. 1, 2007*: http://www.cpalanka.org/research_papers/Col_and_IIGP_FINAL.pdf and "Commission of Inquiry and the International Independent Group of Eminent Persons: Commentary on Developments" *CPA Policy Brief No.2, 2007*: http://www.cpalanka.org/research_papers/Policy_Brief_2_2007.pdf as on 30 May 2007.
- ²¹⁰ See Asian Human Rights Commission (2007) "SRI LANKA: The first statement of the International Independent Group of Eminent Persons and responses from the President's Commission of Inquiry and the Attorney General's Department" *a forwarded statement*, FS-025-2007, June 11: <http://www.ahrchk.net/statements/mainfile.php/2007/statements/1056/?alt=french> as on 26 June 2007.
- ²¹¹ See <http://www.policeact.govt.nz/issues-paper-1-principles.html> as on 22 May 2007.
- ²¹² Commonwealth Heads of Government (2003), *Aso Rock Commonwealth Declaration*: <http://www.thecommonwealth.org/Templates/Internal.asp?NodelD=36175&int2ndParentNodelD=36668> as on 1 June 2007.
- ²¹³ Commonwealth Heads of Government, (2002) *Coolum Declaration*: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{5D88C133-679E-4F04-88E3-688B14E59749}_coolumdeclaration.pdf as on 1 June 2007.
- ²¹⁴ See Commonwealth Foundation (2004), *Framework for Action on Maximising Civil Society's Contribution to Development and democracy 2004-2008*, p. 10.
- ²¹⁵ Neild, Rachel (1999), *From national security to citizen security*: <http://www.dd-rd.ca/site/publications/index.php?id=1308&page=11&subsection=catalogue> as on 3 July 2007.
- ²¹⁶ Sir Macpherson, W. (1999), *Report on the Inquiry into the matters arising from the death of Stephen Lawrence*, February: <http://www.archive.official-documents.co.uk/document/cm42/4262/slj-00.htm> as on 1 June 2007. Stephen Lawrence was a black youth killed in an unprovoked racist attack in 1993 and his family had to wait for six years before an independent inquiry revealed police bias in investigations. The police publicly apologised to

Stephen's parents, and admitted to faulty investigations. Much of the new civilian oversight structure in the UK owes its establishment to the case and the consequent recommendations (See: http://www.ipcc.gov.uk/index/about_ipcc/our_history.htm).

²¹⁷ _____ (2005) "Police attack journalists on World Press Freedom Day" Committee to Protect Journalists Press Release, 3 May: <http://www.ifex.org/en/content/view/full/66370/> as on 1 June 2007.

²¹⁸ _____ (2005) "CPJ condemns attack on Pakistani journalists covering opposition", *News Alert 2005*, Committee to Protect Journalists, 19 April: <http://www.cpj.org/news/2005/Pak19apr05na.html> as on 1 June 2007.

²¹⁹ _____ (2005) "Pakistan police brutality claim", *BBC News*, 15 May: http://news.bbc.co.uk/2/hi/world/south_asia/4548885.stm as on 1 June 2007.

²²⁰ See [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)A.RES.53.144.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)A.RES.53.144.En?OpenDocument) as on 1 June 2007.

²²¹ Amnesty International, *Human rights defenders in Americas*: <http://web.amnesty.org/pages/hrd-index-eng> as on 1 June 2007.

²²² _____ (2004) 'Pulls keep top brass on toes', *Times of India*, 9 December: <http://timesofindia.indiatimes.com/articleshow/952626.cms> as on 1 June 2007.

²²³ The full text of the road map is available at: http://www.presidencymaldives.gov.mv/publications/Roadmap_for_the_Democratic_Reform_Agenda.pdf as on 16 May 2007.

²²⁴ *BLAST v/s Bangladesh* 55 DLR (2003), pages 363-381.

²²⁵ Bureau of Justice Assistance (1994) *Understanding Community Policing: A framework for action*, August: <http://www.ncjrs.gov/pdffiles/commpp.pdf> as on 1 June 2007.

²²⁶ Neild, R. (1999), *From national security to citizen security*, January: http://www.dd-rd.ca/site/publications/index.php?lang=en&subsection=catalogue&id=1308&page=12&tag=&keyword=&show_all= as on 1 June 2007.

²²⁷ Article 168, *Police Order 2002* (Pakistan).

²²⁸ See <http://www.un.org.pk/undp/governance/prodoc-paradigm-3.doc> as on 1 June 2007.

²²⁹ See <http://www.edupk.com/pow/modules.php?name=News&file=article&sid=172> as on 1 June 2007.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

HUMAN RIGHTS ADVOCACY: CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Education: CHRI facilitates judicial exchanges focusing on access to justice for the most vulnerable. Participating judges get a rare opportunity to hear from activists and experts, focus on pressing issues specific to their region and familiarize themselves with recent legal and procedural, as well as social and scientific, developments relevant to their judicial work. The work was begun with INTERIGHTS some years ago. CHRI now works independently to orient lower court judges on human rights in the administration of justice.

